Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 277.

NORTHERN SECURITIES COMPANY AND OTHERS,
APPELLANTS,

vs.

THE UNITED STATES.

BRIEF FOR THE GREAT NORTHERN RAILWAY COMPANY.

The decree in this suit enjoins the defendant, the Northern Securities Company, from holding, voting, receiving dividends on and acting in other ways as owner of, the capital stock of the Great Northern and Northern Pacific Railway Companies, a majority of which it had purchased and paid for in cash, and in its own stock, before the suit was commenced, upon the grounds that the ownership by any single interest, individual or corporate, of a majority of the stock of competing corporations engaged in interstate trade, is, through the voting power of the shares to elect a

separate board of directors for each corporation, a direct regulation of such trade; that though, in fact, the power may be used to enlarge trade and increase competition, in law there is a conclusive presumption that it will not be so used; and that Congress, in the exercise of Federal control has, by the Sherman Anti-Trust Act, forbidden and made criminal the acquisition of such ownership through purchase from two or more owners, if such owners had previously come to an agreement or understanding to make the sale.

The Decree.

FIRST. "IT IS DECREED THAT THE DEFENDANTS ABOVE NAMED (JAMES J. HILL, WILLIAM P. CLOUGH, D. WILLIS JAMES, JOHN S. KENNEDY, J. PIERPONT MORGAN, ROBERT BACON, GEORGE F. BAKER AND DANIEL LAMONT) HAVE HERETOFORE ENTERED INTO A COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE AMONG THE SEVERAL STATES SUCH AS AN ACT OF CONGRESS, APPROVED JULY 2, 1890, ENTITLED 'AN ACT TO PROTECT TRADE AND COMMERCE AGAINST UNLAWFUL RESTRAINT AND MONOPOLIES,' DENOUNCES AS ILLEGAL."

SECOND. "THAT ALL OF THE STOCK OF THE NORTHERN PACIFIC RAILWAY COMPANY AND ALL THE STOCK OF THE GREAT NORTHERN RAILWAY COMPANY, NOW CLAIMED TO BE HELD AND OWNED BY THE DEFENDANT, THE NORTHERN SECURITIES COMPANY, WAS ACQUIRED AND IS NOW HELD BY IT IN VIRTUE OF SUCH COMBINATION OR CONSPIRACY IN RESTRAINT OF TRADE AND COMMERCE AMONG THE SEVERAL STATES."

Pages 1714–15.

Case as Stated and Found by the Court.

The findings of fact by the Court upon which the decree rests are contrary to the evidence. To make this

clear, the findings will be separated, and the evidence bearing upon each finding referred to. It is a fact, that in the transaction under review, there was no device or intent to evade the "Anti-Trust Act," to restrain competition, to monopolize trade, to inflate securities, water stock, or create fictitious capital.

First Finding.

"THESE ROADS ARE, AND IN PUBLIC ESTIMATION HAVE EVER BEEN REGARDED AS PARALLEL AND COMPETING LINES. FOR SOME YEARS AT LEAST AFTER THEY WERE BUILT THEY COMPETED WITH EACH OTHER ACTIVELY FOR TRANSCONTINENTAL AND INTERSTATE TRAFFIC" (page 1704).

The volume of competitive interstate traffic is insignificant. The reason for this is, that the lines of the two roads traverse a sparsely settled country. They really occupy two broad belts of territory running from the Mississippi River and Lake Superior to Puget Sound. For the greater part of the way, they are as far apart as would be two lines of railroad, one running through the middle of the State of New York and the other through the middle of the State of Pennsylvania. They come together at only two points in North Dakota where there is an appreciable amount of interstate traffic—Fargo and Grand Forks—two points in Montana—Helena and Butte—one interior point in Washington—Spokane—and at Seattle and four or five small towns on Puget Sound. The line of the Chicago, Milwaukee and St. Paul Railway Company extends from Chicago, St. Paul and Minneapolis to Fargo; the Union Pacific System extends to Butte and Spokane. Puget Sound rates are made by water competition

Defts.' Map, Ex. 4, p. 964.

Rates of defendant companies cannot be higher to the points named, than the rates of other carriers by rail or water, from a common territory.

(a) All interstate traffic, except that beginning and ending on the respective lines of the defendant railway companies, is carried under joint tariffs with eighteen railroad companies operating west of the Mississippi River and between that river and the Pacific coast, and one hundred and twenty companies operating east of the Mississippi River, and so connecting as to furnish through routes between practically all important traffic centers of the country, both east and west of the Mississippi River (fol. 3802).

The rates in joint tariffs are made by agreement between all the parties, and the tariffs are subject to withdrawal or change at the option of any party, not only as respects the rates, but the division of rates between the parties. In respect to traffic carried under joint tariffs, neither of the defendant companies has ever had, and neither of them can have, an independent rate-making power or control. All joint tariffs to and from points common to the lines of the defendant railway companies have always been, and necessarily will be, the same whether the traffic is carried by one or the other company. Joint rates from all the territory named in the joint tariffs have always been, and always must be, such as lines of railway competing with defendant railway companies for interstate traffic from such territory are willing to adopt. There is no competition between the defendant railway companies, as respects traffic carried under such joint tariffs, other than competition regarding divisions of the joint rate, and this does not affect nor concern the public. Should the defendant railway companies, through consolidation, become one company, the joint rates from all the territory named would not, for that reason, be different from what they otherwise would be,

because such consolidation would not, as respects rates or facilities, change the relation with other railway companies parties to the tariff.

(b) Ninety-seven per cent of the total interstate traffic of both companies is carried under joint tariffs to which they are parties, and concerning which they have no voice other than to accept terms and conditions which all other parties to the tariffs are willing to accept. Joint tariffs will not be different from what they otherwise would be because the board of directors of each company is selected by a single shareholder, holding a majority of the shares of the companies, instead of by many shareholders owning a majority of such shares.

The following table shows the percentage of interstate traffic subject to control by the defendant companies in the exercise of their rate-making powers. It does not equal three per cent. of the total interstate traffic of either company, and does not amount to $600,000 a year out of interstate earnings of each company exceeding $18,000,000.

The percentage of interstate traffic on the lines of the defendant companies, which can be controlled by joint action of the companies, is as follows:

Great Northern	2.78
Northern Pacific	2.89

Percentage of interstate traffic, the rates on which can be controlled by joint action of defendants with connecting lines:

Great Northern	.65
Northern Pacific	4.90

Percentage of interstate traffic, the rates on which can be controlled only by agreement with lines competing with the defendants:

Great Northern	6.89
Northern Pacific	2.58

Percentage of interstate traffic, the rates on which can be controlled only by agreement

with lines competing with defendant companies and with connecting lines:

Great Northern 17.09
Northern Pacific 13.25

Percentage of interstate traffic moving between stations on line of Great Northern Company, neither of which is reached by lines of the Northern Pacific 72.59

Percentage of interstate traffic moving between stations on line of Northern Pacific Company, neither of which is reached by lines of the Great Northern 76.38

Interstate business forwarded from and to towns reached by lines of the defendant railway companies only:

Great Northern $471,218.88
Northern Pacific 554,395.24

Total interstate business, both companies:

Great Northern $16,920,906
Northern Pacific 19,253,852

Exhibit "6," fol. 3819; Exhibit "7," fol. 3834; Rec., fols. 3147–3188.

Second Finding.

"IN THE SPRING OF THE YEAR 1901 THEY (THE DEFENDANT RAILWAY COMPANIES) UNITED IN PURCHASING ABOUT 98 PER CENT. OF THE ENTIRE CAPITAL STOCK OF THE CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY AND BECAME JOINT SURETIES FOR THE PAYMENT OF BONDS OF THE LAST-NAMED COMPANY, WHEREBY THE PURCHASE WAS ACCOMPLISHED, WHICH WERE TO RUN TWENTY YEARS AND BEAR 4 PER CENT. INTEREST PER ANNUM. THE AMOUNT OF STOCK SO ACQUIRED WAS OF THE PAR VALUE OF ABOUT $107,000,000, AND, AS IT WAS PURCHASED AT THE RATE OF $200 PER SHARE, THE BONDED INDEBTEDNESS OF THE TWO COMPANIES WAS THUS INCREASED TO THE EXTENT OF $200,000,000."

Rec., p. 1704.

The purchase was not joint. Each company purchased an equal interest in ninety-eight per cent. of the entire capital stock of the Burlington Company.

They did not become joint sureties for the payment of bonds of the Burlington Company. They executed their own joint and several bonds on account of the purchase of the Burlington stock, and pledged the stock as security for the bonds. The Burlington Company did not execute an obligation in connection with this purchase. The stock of the Burlington was worth all that was paid for it, and there was no thought of the Northern Securities Company or of any single ownership of a majority of the shares of the defendant railway companies, in connection with the purchase.

First Thought of Purchase.

MR. HILL:

"Q. Why was it, Mr. Hill, that you took no steps for the purchase of the Burlington road, or some other eastern connection, prior to 1900 and 1901.

"A. The earliest consideration of that question, which I recall, of a line to the south—and the Burlington was mentioned at the time—was in 1897. It was by some friends of mine in London. But we were just emerging from a period of business depression, and the undertaking was a very large one for the Great Northern Railway—a very large one. It was thought that, if the two roads having the same general interest in the broad question of developing their local business would take it up, the burden would be very much less, and the Northern Pacific was hardly in a condition to take it up sooner than the time when it was taken up. Its earnings and dividends were hardly established. While its earnings had been increasing quite rapidly, the company's recent reorganization left its credit somewhat on a different basis from the Great Northern, which had been paying dividends from its organization or commencement.

Fol. 2719.

MR. MORGAN:

"Q. When did you first hear of the proceeding or negotiation to purchase the entire capital stock, or

endeavor to do so, of the Burlington by the Northern Pacific? * * * * * *

"A. If you will allow me to state to you the history of that in my own words, I will tell you the transaction from beginning to end. I think it was in 1899—it may have been in 1898.—I made up my mind that it was essential that the Northern Pacific Railway Company should have its terminus practically in Chicago, and in the same manner that the New York Central, of which I am a director, at that time or soon after decided the same thing with regard to their line, that the western terminus of their line should be in Chicago, practically by acquiring the Lake Shore; in other words, that the transcontinental line should come to Chicago, and that the eastern line should go to Chicago, so that was to be the central point, and I talked it over with a great many people interested in the Northern Pacific, and I found they all agreed with me.

Fols. 1304–1307.

Why The Purchase Was Made.

The defendant railway companies have expended millions of dollars in building great instrumentalities of commerce. They have little to sell but transportation, and they are confronted with the problem of finding a market in which to sell it. The traffic beginning and ending on their respective lines is light, owing to the fact that the country traversed is sparsely settled or not settled at all. The commodities furnished for carriage are raw materials of great weight and bulk in comparison to value, and which will not bear transportation to market, except at a low rate, such as can only be made profitable by an increase in volume of traffic. The cost of running a train is practically the same whether it is light or fully loaded. The cost of moving a ton of freight on any railroad decreases as the number of tons moved on it increases. It became indispensable to the welfare of the defendant companies,

and to the development of the country which they serve, that they should take steps to increase their volume of interstate and international traffic, in order to be able to reduce rates and meet, not only the competition of railway lines, but competition on the ocean and by way of the Suez Canal. To do this it was necessary to reach markets for the products of the territory along their lines, and to secure connections which would furnish the largest amount of traffic for their respective roads, and thus increase trade and interchange of commodities under conditions more favorable, because more permanent, than joint tariffs subject to be withdrawn or changed at any time, without their consent and against their protest. *Had the line of the Burlington Company not been constructed, and had the defendant companies constructed it as it is now located, the act would have been regarded as a great achievement for the country served by it, as well as for the country served by the lines of the defendant railway companies, because of the advantages to be derived in creating and interchanging traffic. The resulting increase in volume of traffic would enable the companies to reduce rates, and thus strengthen each company in its competition with the more southerly lines, with the Canadian Pacific Railway, and with European carriers, for the trade and commerce of the Orient.*

MR. HILL:

Q. State whether the Pacific coast, and the population reached by your lines there, furnished a sufficient market for the commodities which it was necessary for you to carry westward, in order to give low rates eastward on your line.

A. At the time the road was completed, (it was in 1893) and for a short time afterward, the westbound merchandise furnished more than enough empty cars

to move the lumber east, but within a short time, two or three years, the lumber trade had grown very rapidly, and the Alaska trade sprang up, and that furnished a larger westbound movement. Honolulu increased the westbound movement, and to some extent in 1896, by making very low rates, we were able, for the first time, to take American rails to Japan (fol. 2647).

Q. What steps did you then take, what markets did you seek for westbound traffic on the line?

A. Well, we took every step we thought would result in developing the trade. I sent men to Japan and China and kept them there—one man for over a year. His business was to get a manifest of every ship that entered or left a Chinese or Japanese port, as far as he could; to find what the exports and the imports of those countries consisted of, and where they went. Afterwards we sent one of our traffic representatives and kept him there for a time. We also had men in the east, and wherever there was any business or likelihood of business.

Q. I wish you would go on now, and state in a general way the growth and development of this Oriental business and traffic, what steps you took to secure transportation across the Pacific Ocean, and also what connection or relation, if any, there was between the building up of this Oriental commerce and the purchase of the Burlington road or the stock of the Burlington?

A. We found that the lumber supply of the United States, east of the Rocky Mountains and north of the Ohio River, was becoming more and more dependent upon the Washington and Oregon forests, and that the time was rapidly approaching, when the States that theretofore furnished the lumber for that region would not be able to furnish lumber enough to meet their own consumption. Michigan furnished, for a long time, the bulk of the lumber going into the States east of Lake Erie or of Detroit, and also the large markets in Chicago and west of Chicago. I think it is reasonably safe to say, that Michigan does not furnish to-day as much lumber as she consumes. *I have given a great deal of attention to that matter, because at the time we considered building the road, and when I first went to the Pacific coast, if we could not carry that lumber to market there was absolutely nothing else for us to carry, and no use in building a road there.* I felt, after making a thorough examination of the lumber trade of the

country, that it was only a question of time when that would be the source from which all the northern lumber would have to be supplied, or practically all; and the result has shown that the time when such would be the case is much shorter than I anticipated. But in order for that lumber to move, it must be moved at a low rate; and in order to make a low rate you must have a large tonnage, and you must load your cars in both directions. That carried us to investigating the different markets to which we could send anything that was made in the east. In 1896, in the fall, we had just closed an agreement with the Japanese General Steamship Company to put on a line of through steamers running to our terminal at Seattle in connection with our road, and the conditions of the contract were such as to enable us to make a rate from the east to the Orient. I remember when those men were present with us. Some of them were interested in securing rails for their railroads. I asked them where they were going to get their rails. They thought they would either get Belgian or English rails. The Belgian rails would come from Antwerp, the English rails from Middlesboro. I asked them, as they were going to stay here a day or two, to let me see what could be done for American rails. I immediately cabled to my friends in London and got quotations for Antwerp and Middlesboro rails, and the best charters to Yokohama. I remember that the rails could be laid down at about $29, the English or Belgian rails. I telegraphed to Chicago. The time was rather a quiet one in American manufactures, especially with the rail mills (the Joliet and one or two otheas were about closing down) three or four weeks before election, and possibly they were a little anxious to keep their mills running. I told them if they would make a price of $19.50, we would give them a rate of eight dollars a ton—or 40 cents a hundred—from Chicago to Yokhama, which would be $1.50 a ton lower than the English or Belgian quotations. After some hesitation they made the price and got the contract for 15,000 tons.

Fols. 2647–2656.

Cotton.

Some Japanese were passing through. The men I had out there reported the amount of cottan spun in Japan, and the fact that the cotton came—raw cotton

—mainly from India; a short staple cotton, which made an inferior yarn and sold at a low price. I got these gentlemen to try a small shipment of American cotton, with the guaranty, if it did not prove profitable to mix our long staple with their short staple of India, that I would pay for the cotton. The result of that was very satisfactory. The cotton trade has grown very fast, both raw and manufactured, but especially raw cotton. We have chartered ships to run to Honolulu, and make low rates there. The rates we made, and the rates we are making now, are very low. We make a rate from Minneapolis to Hong Kong, or from St. Paul, or any part of the state here, to Hong Kong, that would enable them to ship flour, if the Chinamen wanted to use flour, or were able to buy it (they are rather poor over there just now, and have to be content with millet, they can't buy flour). In carrying this business forward we were soon brought to a point where we realized that the rates, in order to build the traffic upon a permanent basis, must be permanent, or reasonably so. We found, in going to the south for cotton—Texas cotton going to Galveston, and the Gulf states cotton going to New Orleans, that it went at different rates, and went from New Orleans to foreign ports at such rates as the ships were inclined to make, according to the supply and demand for tonnage. *We found that it was necessary for us, in order to be on a permanent basis, to have more than a joint rate, to have more than a joint tariff, which might be withdrawn at any time. We could not build up a great permanent business, extending across the continent, and even across the ocean, on the basis that to-morrow the rate might be changed, or the party with whom we were working to reach the different points of production or consumption, had some other interest, or some greater interest elsewhere. It was necessary in doing this that we should have some reasonable expectation that we could control the permanency of the rate and that we would be able to reach the markets. In other words, if the man producing lumber on the coast, or cattle on the ranges, or ore in the mines, could not find a market for it, and if we could not take it to a market that would enable him to sell his stuff for a profit, he would have to stop making it. That was the line we worked upon, and that was the reason we felt called upon to put ourselves in a position where we could control access to the markets for him and access to*

the production for the west-bound. The Burlington reaches, more than any other road in the country, I think, these particular conditions; I think probably as much as all the other western roads put together.

Q. In that particular, as to the places which it reaches, what are the distinguishing features of the Burlington, as compared with the other roads; what points does it reach?

A. Well, if you will commence in the west, it connects with the Northern Pacific at Billings; it reaches Denver; it reaches Lincoln and Omaha, Nebraska; coming east to Des Moines and to Burlington, and going south to St. Joe, Kansas City and St. Louis; and then you may commence at St. Louis; and it reaches every town between St. Louis and the Twin Cities. It reaches Chicago, Peoria, Galesburg, Aurora—all those large points in Illinois. I had the figures and probably I might be able to find them. It reaches a very large percentage of all the manufacturing interests in the state of Illinois, and Illinois is a large manufacturing state.

Q. What are the principal markets in the West for the cattle that are brought over your line from the ranges?

A. Well, the principal markets in this country over all lines are Omaha, St. Joe, Kansas City and Chicago.

Q. All reached by the Burlington?

A. By the Burlington.

Q. As for this ore from the mines, that is shipped eastward?

A. Well, the Burlington runs to Denver and has connection over some road to (Pueblo) Colorado, but Denver and Pueblo are the principal western terminal smelting points.

Q. Omaha?

A. Omaha, Kansas City, Aurora (Illinois) and the Black Hills. I think, outside of the copper smelting in Montana, those points cover three-quarters of the smelting in the United States.

Q. What advantage does the Burlington give you in regard to obtaining cotton for shipment?

A. The Burlington, at St. Louis and Kansas City especially, connects with all the southern railways reaching the cotton fields. To illustrate. Mr. Ripley, President of the Atchison, a few weeks ago told me he found they could make more money loading their cars that went down to Texas and back to St. Louis with cotton,

than they could in hauling the cotton to San Francisco. They would rather haul it up to St. Louis in the return cars and give it to us and let us take it abroad, because they had to haul the car that took it to San Francisco back empty. They had no lumber to bring back, and we had lumber to bring back, for every car we carried. So that the question is one that depends on the low rate, on the bulk of the traffic, the density, the amount of the traffic and the ability to load in both directions. It would seem rather strange that we should take cotton from Texas to Puget Sound (I think Puget Sound last year carried 75% of all the cotton that left the Pacific coast, and it is the farthest port from the cotton) but the conditions are such as to enable us to carry it there.

Fols. 2657 to 2666.

MR. MORGAN:

"There was the St. Paul, and the Burlington & Quincy and the Wisconsin Central. Of course, we would not have taken the last one anyway. Consequently we came down to the question of the St. Paul. I made up my mind that of the two I would rather have the St. Paul. Soon after that I met Mr. Hill, and I said 'Mr. Hill, I think that is the best thing we can do.—I think your line perhaps is in the same condition.—I think we had better go to work and secure the St. Paul road, or a road to Chicago, and if you will share with us, we will do it together.' He said 'All right.' So he said, 'Who would take it up?' I said, 'I will; I think we had better take the St. Paul.' He said he thought we had better take the Burlington. I said I would rather have the St. Paul; because the financial responsibility to take the St. Paul would be less. He did not agree with me, but he acquiesced in my decision, and we discussed that question. I took up negotiations—not in any secret manner. We went directly to the directors of the road and told them what we wanted. We found some of them disposed to make the transaction, others were not. I will tell you what my reasons were for taking the St. Paul in preference to the Burlington. Mr. Hill's opinion—I will give you what I understood to be his opinion—was that the Burlington system offered a better market for the coarse freight we were hauling from the Pacific Coast for distribution than the St. Paul, and he

wanted the Burlington because he thought that would have been open for the freight from the Pacific to greater advantage than the St. Paul. However, as I say, he acquiesced in my decision. These negotiations, as I said, went on for some time, and finally the directors of the St. Paul asked me for a conference, and then they told me very frankly that they had decided they would not let us have the road on any terms. * * * Then I went to Mr. Hill and told him so. You can go ahead and see what he could do with the Burlington, and he took up negotiations with the Burlington, which were carried through successfully. That is the whole story. * * * It was a transaction entirely independent of all other transactions that you have in mind, or anything of the kind. It was a perfectly independent transaction, and it was done to attack nobody or to do anything. It was simply to bring those two northern lines to Chicago.

Fols. 1308–1312.

Joint Rates.

MR. HILL:

Q. In reference to shipments of cotton especially, and other articles, what disadvantage was there in its being carried over separate lines under a joint tariff, which you do not have where it is carried with both roads under the same control, for instance, in the matter of breaking bulk, or anything of that kind, shifting from cars?

A. Well, it is almost a necessity, if business is to be at all permanent, to be able to control the rate. The rates on the high seas vary according to the supply and demand for ships; and we, in order to take this business west, must be in a position to compete to take the traffic, one day with another. The line between here and St. Louis, if the Burlington, was not in a position to work with us, and to continue to work with us, might find some other connection that would give it a larger division than we could make of the rate; they might find or feel that it was their interest to work with somebody else. Maybe they would give them some other business in lieu of this, and we would have to hire some other road to haul that business from St. Louis here, at the best

rate we could get. We could not control it except through the option of some other road, which might at any time withdraw the rate; might at any time refuse to make a joint rate with us, except on terms that would be prohibitory. And in that way, we could not go very far. We would not be in a position to compete for that business. We must either take that business to the Coast—we must take all the westbound business we can get to the Coast, or else we must advance the rate on the lumber. Now, outside of cotton—take nails, wire, articles of that kind, that business has grown to very large dimensions, but our rate is a very low one. From Lake Erie to Hong Kong it is 45 cents a hundred, $9 a ton, on those commodities. But the demand for American steel at home makes it almost a matter of indifference whether they send it or not, so we have to look, not only for cotton, but we have to look to anything that will furnish us business going to the west, whether it is going to the Pacific coast or to Alaska, or to Honolulu, or to the Orient, or Manila—anywhere; we must try everything. *During the season of open water, during the season of navigation, we can make rates from Buffalo and the lower lake ports by way of Lake Superior on our own lines, but that does not reach to the south, and only takes the manufacturing districts south of the lakes during the season of navigation. A line reaching St. Louis and all the trunk lines of the south, and the trunk lines of the east, between St. Louis and Chicago, puts us in a vastly different position, and that is the reason why it was of such importance for us to control the situation. We could not control it without controlling the access to the main centres. We could not control it unless we could give a market for the production of the line—products raised along our road—whether it was out of the mine, from the farm, or out of the forest. If the man who produced it could not sell it, he would stop producing. And that was the problem we had to meet, and with the Burlington we find ourselves able to meet it.*

Fols. 2686, 2690.

Q. Now, to get back to the increase of traffic that was to come to you from the Burlington by reason of your acquisition of it. Do you wish to be understood as stating that because the Northern Pacific and the Great Northern purchased the Burlington road, traffic was actually created by that fact? Or did you mean

to say that you would get a larger portion of the Burlington's traffic by reason of your ownership of the Burlington?

A. *Not by any means. The object was to make it possible to carry out a clearly and well-defined plan. If we depended upon joint tariffs, if we depended upon lines of railroad coming here that had no interest in our road, or we had no interest in them—take for instance, the St. Paul road, which has just been or is advertised as having been allied with the Union Pacific; the Chicago and Northwestern which comes here and has a contract with the Union Pacific; their lines reach away out to Omaha and into the Platte Valley; they have a direct interest in taking their business over their own lines and not bringing it here. Now, we wanted to be in a position where we were not subject to the good will or the changes of ownership of any railway; we wanted to be in a position where we could reach these centres, and to do that the Burlington gave more ground than any of the other lines —practically, I think, as much as all of them. And it was to put us in a position where we would not be defeated in building up the traffic of these northern States and the northern lines to the East.*

Fol. 2916.

Q. I ask you now, do you state that the acquisition of the Burlington by the Northern Pacific and Great Northern will create traffic that would not otherwise exist?

A. *It has created traffic. The figures show that the traffic has increased very materially. Now, how much of that traffic would have been created, or would have existed, it is very difficult for me or anybody else to say. But we know that the traffic has increased since the acquisition of the Burlington, to an enormous extent, and we know further that we are able not to compete alone with railways, for that is a small matter in this business, but to compete in the matter of rates with the ships going from New Orleans or from Galveston, or the railways carrying it anywhere, or in connection with any other system of transportation. Now, we are able to make a rate that will take that business. And it was that rate I had reference to, and that policy and that ability that I tried to make plain yesterday.*

Fol. 2920, 2921.

MR. HARRIS:

Q. What is the mileage of the Burlington?

A. In the state of Illinois, 1,500 miles; Iowa, 1,400 miles; in Nebraska, 2,400; Missouri, 1,100; Kansas, 260; Colorado, 400; Montana about 200; Wisconsin, 223; Minnesota, 38; altogether about 8,200 miles main track, counting straight main track, and about 460 miles of double track.

Q. Will the acquisition by the Great Northern and Northern Pacific of the shares of the Burlington restrain trade and traffic between the states and foreign countries?

A. On the contrary, I think it will promote business very greatly, and develop latent resources and enable forest, mineral, and other products and resources to be utilized which are now idle.

Q. Speak on that subject with respect to general merchandise, manufacturing industries and products.

A. I think that the practical extension of the Burlington road to the Pacific coast, by reason of its connection and union with those two lines (whatever you may call it,) and the practical extension of those lines into the Mississippi and Missouri valleys, and throughout all the country occupied by the Burlington lines, by affording an opportunity to merchants and manufacturers to extend their markets, that they will do it, and that the opportunity to trade will be taken advantage of to promote business and commerce.

Fols. 2969-2972.

MR. MELLEN:

Q. Did the acquisition of the stock of the Burlington road by the Northern Pacific and the Great Northern have any effect or influence to restrain or hinder trade or commerce between the states and with foreign countries.

A. I thought it promoted rather than hindered it.

Q. Will you tell us in what respect it promoted it?

A. It resulted in a much freer interchange of business between the Northern Pacific and Burlington. The business increased very much. It has been more to the interest of the two companies to work closely together. It has opened a much wider market to the products tributary to the line of the Northern Pacific and the business has increased. I have no figures to show, but it is my impression the business

has increased very considerably, and is bound to increase from month to month, and from year to year, as the result of the acquisition.

Fol. 3417.

Q. Why does this existing arrangement between these roads tend to create or promote business beyond what a mere connection and joint tariff would have done?

A. It is among the possibilities that a joint tariff and interchange under the same might produce a large business, similar to that perhaps that we are now doing, but it is uncertain and insecure, and people establishing large industries, and seeking a market, want to be sure of a secure one, that it may not be subject to the whims of management, that might possibly see in another part of the country a chance to get a few cents more on a carload of freight and divert the lumber business now coming from the state of Washington, say to Texas, or some other point where a supply could be obtained under a division of rates with the Burlington road. That might make it equally as well for the Burlington road, but at the same time would cause the Northern Pacific a great loss.

Fols. 3424–3425.

Beginning of Negotiations.

Negotiations were commenced with the directors of the Burlington Road in January, 1901, and concluded in April.

Fols. 101–103, p. 27.
Fol. 170, p. 44.

There was no connection between the dissolution of the Northern Pacific voting trust and the purchase of the Burlington stock.

MR. MORGAN:

Q. When was it first decided to dissolve the voting trust of the Northern Pacific?

A. I think in October, 1900.

Q. Why was that decided ?

A. I came to the conclusion that the condition of the company was such that it could be safely turned over to the stockholders, and for the reason that I thought the time was approaching when it would be desirable to retire the preferred stock, and I preferred that that question should come up before the stockholders then rather than the voting trustees, and that was one of the leading reasons which induced me.

Q. Was the question of retiring the preferred stock ever submitted to the stockholders ?

A. No, but I mean that they should act upon it.

* * * * * *

The retiring of the preferred stock, of course, was in the hands of the directors, but those directors were elected by the voting trustees. There was an election in October, 1901, to elect directors. I preferred that that election should take place by the stockholders themselves, rather than simply by the voting trustees.

Fols. 1285–1287.

* * * * * *

When the Northern Pacific was reorganized, the times were very bad, and the indebtedness of the Northern Pacific—the old company—was very large. It was not possible, it was not desirable, and I don't think it would have been possible at that time, with the credit of the Northern Pacific in the market, or the public opinion of the value of the property, to get a syndicate up large enough to raise an almost indefinite amount of money. At the same time, provision had to be made to take up bonds and stock of the old company under the reorganization. Consequently in making up the plan Mr. Coster and myself, together with Mr. Stetson, who advised us on the legal points of the question, decided this point, that if we could issue a preferred stock, which would be a temporary security upon which we would not have to pay interest unless the road earned it, and which at any time we could retire if we wished to. that that would be a safe transaction, and that plan was decided upon, and such a security was issued in the shape of the preferred stock. That preferred stock, as you will see by the plan of reorganization, which I have agreed to submit to you, was used to take up obligations in the shape of bonds, notes, and old debts of the original Northern Pacific Company, and it was successful, and

from the day that that plan of reorganization was issued, we never had one moment's doubt that within a very few years, and before the expiration of the time fixed for the voting trust, that the common stock would have reached a point in its price where it could be sold at par, or better, and the preferred stock retired, which restricted not only the income of the property, but also restricted certain lands which were set aside, and upon which the preferred stock was, to a certain extent, a lien. Consequently, it was always considered, and always known, by everybody connected with the Northern Pacific, that the amount of preferred stock which was outstanding was simply a temporary loan until we should issue the common stock at par and take it up, and, consequently, in dealing with the question, the question simply was when the directors of the Northern Pacific should decide that it was expedient to do it.

Fols. 1291 to 1294

MR. STEELE:

Q. Do you know how it happened that a plan of retirement was adopted that prevented the preferred stockholders from participating in the benefits, and obtaining convertible certificates?

A. I know how it was adopted. It was adopted by a vote of the board of directors.

* * * * * *

Why it was adopted was, it was considered by us, my firm, who were fiscal agents, and by the board of directors, as a fair, equitable, wise and expedient plan to pursue.

Q. And it was also considered by your firm that if any other plan was adopted, or if the preferred stockholers were given equal privileges in the retirement, that it would throw the control into this other interest (the Union Pacific) that had the $78,000,000, was it not?

A. No, sir.

Q. That was not considered at all?

A. We never took that into consideration at all.

Fols. 1214 to 1216.

Q. Do you know why it happened to be taken up and acted on at that particular time?

A. I do; it had been intended from the time of the reorganization to retire the preferred stock as soon as the company became financially able to do so. The voting trust by its terms continued until January, 1902, but in the fall of 1900 the company had become very prosperous; it was very strong, and it was deemed by the voting trustees that they had fulfilled the purpose of their trust, and that they could properly dissolve the voting trust on the first day of January following, which was 1901. The only uncompleted object of the reorganization was the retirement of the preferred stock, and they intended at the time that the voting trust was dissolved that the preferred stock should be retired on the first of January, 1902, that being the first date when it could be retired under the provisions of the charter, by-laws and stock certificates.

Fols. 1217–1219.

The Burlington purchase was not made with a view of organizing the Northern Securities Company, or unifying ownership of the Great Northern and Northern Pacific shares.

MR. HILL:

"Q. In planning and carrying out the purchase of the Burlington shares, was it any part of that scheme, so far as you know, that the shares of the Great Northern and Northern Pacific Companies, or any of those shares, should be put into a holding company?

"A. That was no part of the Burlington transaction; it was not considered. I don't know that it was thought of. I know it was never discussed, and I don't think it was thought of or cut any figure whatever in the Burlington purchase.

* * * * * *

But the question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection nor until long afterwards.

"Q. At the time of making the Burlington purchase was there any purpose on your part or, so far as you

know, on the part of your associates, or Mr. Morgan and his associates, of increasing your holdings of Northern Pacific stock so as to obtain a controlling majority of that stock?

"A. There was no effort made to increase the holdings of the Northern Pacific by the stockholders of the Great Northern that I know of, and I am very well satisfied that had such been the case I would have known of it. In fact, some of them had sold their stock as the prices advanced. As to Mr. Morgan's views about increasing his Northern Pacific, I do not think Mr. Morgan's people increased their holding of Northern Pacific up to and during the time the Burlington transaction was being considered.

Fols. 2720, 2724.

Q. Between March and the 1st day of May, 1901, had you and others representing the Great Northern and J. Pierpont Morgan & Co. been buying stock in the Northern Pacific?

A. I had not. I don't know that any one else had for Mr. Morgan or the gentlemen you have named.

Fol. 180, p. 46.

Q. At that time, in April, (conclusion of the Burlington purchase), how much common stock did you and your immediate associates hold in the Northern Pacific?

A. I should think, on the 1st of April, somewhere from 33 to 35 millions.

Q. And about how much of that was held on the 21st of April?

A. Well I don't know that it was not all held then. I know that on the 9th of May, after there had been a struggle, or we will say up to the 3rd of May, after prices had been put up to above par, 110 or 120, and it was actually demonstrated that there was an attempt to buy the Northern Pacific, I sent word to a few of my associates who were large stockholders, and they sold no more of their stock from that time. Some of them had parted with large amounts of the stock. I know that Morgan & Co., for a fund they had, on the 2nd of May, sold over a million dollars, probably a million and a quarter or more of the stock. They thought that the market price was quite high, and did not believe that anybody was trying to raid the property.

Q. On the 5th and 6th of May the holdings of yourself and the gentlemen associated with you amounted, as I think has already been testified, to between 21 and 22 millions of common stock.

A. I think, at that time, the closest estimate I could make was between 20 and 21 millions" (fols. 2727, 2731).

Thus it appears that prior to May 5th, there had been no attempt on the part of Mr. Hill, and those charged with being his associates in the alleged combination, to increase their holdings of Northern Pacific stock, but on the contrary some of them had sold, between the 1st day of April, and the 3d day of May, several millions of Northern Pacific shares which they had held for a considerable time, and which they would not have sold had they contemplated placing a majority of Northern Pacific shares in the hands of a single owner.

Pending the Burlington purchase, Union Pacific interests requested to be allowed to join in the purchase because the defendant railway companies were getting too strong, and were going down into the country served by Union Pacific interests, and taking from it traffic and people.

MR. HILL:

Q. Did the Union Pacific, or anybody representing the Union Pacific, at or about the time you opened negotiations with the trustees or directors of the Burlington Railroad Company, request to be allowed into the deal of purchasing the Burlington?

A. About the time that the Burlington people and representatives of the Northern Pacific and myself had arrived at an understanding in regard to the Burlington property, matters were so far advanced that Mr.

Baker, on behalf of the Northern Pacific, and myself were going to Boston, and we were requested by two members of what had been the Union Pacific reorganization committee, or acting for the Union Pacific people, to be allowed to join in the purchase. (This was early in March.)

Fols. 171 to 173, p. 44.

Q. You have been questioned as to what effect or what injury the acquisition of the Northern Pacific stock by interests hostile to the Great Northern or hostile to the development of this Northwestern country, would have on the Great Northern Company. Now, I want to ask you what effect would such an acquisition of the majority, or of the control of the Northern Pacific by a corporation which had greater interests in other directions than it had in developing the country traversed by the Northern Pacific, developing the country and making that country valuable—what effect would that have on the minority stockholders of that company, including yourself; on their property, their stock?

A. The value of the property would be destroyed. Its growth would be restricted. It would be controlled in the interests of another property or body for the reason that it would be restricted, or might be restricted, so as not to interfere with the growth of the other property. We were making great efforts, and very successful efforts, at that time, to settle up all this northern section between the Great Lakes and Puget Sound, and bringing in an enormous number of people, many of these people coming from the line of the Union Pacific in Kansas and the Southwest, bringing them up here. *And I remember one reason why they wanted to get a joint interest in the Burlington; they said we were getting too strong for them; we were going down into their country and taking people from there. That was one of the reasons they gave.*

Fols. 2945–2948.

Q. You understood at that time that the Union Pacific owned and controlled the majority of stock of the Southern Pacific?

A. I have never understood that it owned a majority of the stock. I knew that it had purchased, or at least was informed, that it purchased, the Huntington interest, but that was not a majority.

Q. And the Southern Pacific controlled the Central Pacific?

A. Well, I don't know which was considered the parent company, whether the Central controlled the Southern or the Southern the Central. It was one interest.

Q. And the Oregon Short Line had been controlled and managed by the Union Pacific?

A. For some time.

Fols. 521–524.

Union Pacific interests, after refusal of request to join in the Burlington purchase, acquired a majority of Northern Pacific shares.

This purchase was made to acquire an influential voice in the control of the Northern Pacific Company, and to prevent the carrying out of the plan of the Northern Pacific and Great Northern Companies to increase their volume of interstate and international traffic through the Burlington purchase. The Union Pacific Company, through its proprietary lines and connections, had access to Butte, Montana; Spokane, Washington; Portland, Oregon; and through its relations with the Southern Pacific, and with lines running to Chicago, had a much more direct communication with the great traffic centres of the country east and west of Chicago than the defendant railway companies, and more permanent business relations than those depending upon joint tariffs. After the close of navigation through the Great Lakes, the defendant railway companies could obtain little interstate or international traffic except by connection with lines running to Chicago, and under joint tariffs which could be withdrawn or changed at any time without their consent.

MR. HARRIMAN:

Q. You are a member of the board of directors of the Union Pacific and chairman of its executive committee?

A. Yes, sir.

Q. You are also officially connected with the board of directors and the executive committee of the allied interests of the Union Pacific?

A. Nearly all of them.

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about $78,000,000 par value.

A. Yes, sir.

Q. And that stock stood in your name and that of Mr. Pierce holding it for the interests that you represented?

A. Yes, sir.

Fols. 3564–3566.

Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?

A. Practically that is what we thought.

Fol. 3578.

Q. When you began buying this stock for your company or companies you did it with the expectation of acquiring control in the Northern Pacific, of course?

A. Or an influential voice in the management.

Q. And you knew that you did in fact have a majority of the combined stock of the Northern Pacific after you got through with your purchases?

A. Certainly.

Q. And would continue to control that company unless they retired your preferrred stock?

A. Or unless we sold it.

Fol. 3599.

Q. Mr. Harriman, has the Union Pacific any stock interest in the Southern Pacific?

A. Yes, to an amount between 35 and 40 per cent. of the entire capital stock. It was acquired by purchase.

Fols. 2385–2386.

Q. Any other interest in the Southern Pacific, except what results from that ownership, any lease, guaranty of dividends or bonds?

A. No; nothing whatever.

Q. In round numbers what does that stock at par value amount to?

A. To about $75,000,000 of the total capital stock of the Southern Pacific, which is about $200,000,000. That stock is held by the Union Pacific Company—the corporation.

Fols. 2386-2388.

Q. You are President of the Oregon Short Line?

A. Yes, sir.

Q. And the Union Pacific owns all of the stock of the Oregon Short Line?

A. Approximately all.

Fol. 2390.

Q. What is the total capital stock of the Oregon Short Line?

A. I think between 27 and 28 millions.

Q. It purchased how much stock of the Northern Pacific?

A. $78,000,000.

Q. How did it pay for that stock?

A. Some in cash and some by issuing its own obligations against that stock. 15 or 20 millions in cash came out of its treasury.

Q. How was the money raised by the Oregon Short Line to acquire the balance of $60,000,000?

A. By issuing its own certificates of indebtedness. The Union Pacific helped the Oregon Short Line to finance it and purchased from the Oregon Short Line the certificates of indebtedness, the money for which it used in paying for the Northern Pacific stock.

Fols. 2393-2395.

Q. The Union Pacific Company owns $75,000,000 of the stock of the Southern Pacific Railroad Company, or Southern Pacific Company. The Union Pacific Company also owns all or nearly all of the stock of the Oregon Short Line. The Oregon Short Line owns all or nearly all of the stock of the Oregon Railroad and Navigation Company?

A. The Short Line has a considerable interest in the Navigation Company. I think our reports show that the Union Pacific owns a considerable interest in that company.

Q. What the Union Pacific does not hold in the Oregon Railroad & Navigation Company the Oregon Short Line does?

A. Practically.

Fols. 2410–2412.

At the time of the purchase by Union Pacific interests of a majority of Northern Pacific shares, J. P. Morgan & Co. owned about six millions, and Mr. Hill and associates named about twenty millions, of the eighty millions of Northern Pacific common. On learning of such purchase J. P. Morgan & Co. bought fifteen millions of Northern Pacific common, in addition to the six millions then owned by the firm, and this, with the twenty millions owned by Mr. Hill and associates, made a majority of the eighty millions of Northern Pacific common. This purchase was made in the belief that the Northern Pacific Company had a right to retire its preferred stock on the 1st day of January, 1902, through an issue of new common, and with the expectation that the stock owned by J. P. Morgan & Co. and Mr. Hill and associates would be held for the purpose of retaining stock control of the Northern Pacific Company, as a defensive measure to protect themselves and other shareholders of the defendant railway companies against

the attempt of the Union Pacific to defeat the purpose for which the Burlington shares were purchased.

In interstate and international commerce the defendant railway companies compete, within this country and on the ocean, with other carriers. Their rates are and must be made in competition, not only with other lines of railway, but with carriers upon the ocean and by way of the Suez Canal. They were placed at a disadvantage with the Union Pacific and other transcontinental railroads, as well as with European competitors, by want of a sufficiently direct connection with the great traffic centres of the country, east, south and west of Chicago, which offer the best markets for the products of the country along their lines, and from which their traffic must be largely supplied. For many months they had considered best means of getting closer to those markets and sources of supply. Their purchase of Burlington stock was made because the lines of the Burlington, better than those of any other company connecting St. Paul with Chicago and other traffic centres, fulfilled the requirements of both companies in respect to markets for eastbound and freight for westbound traffic. At the time of the purchase of Burlington stock, it was not contemplated by either purchasing company, that any alliance between them, or among their shareholders, was needed to preserve to each company its fair share of the advantages secured by the purchase. It was thought that the manifest interest of each company rendered any further guaranty or security needless. The intent of the purchase by Union Pacific interests of a

majority of Northern Pacific stock was to defeat, and if successful it would have defeated, the carrying out of the purpose for which the Burlington stock had been purchased, and would have subordinated the policy of the Northern Pacific and Great Northern Companies to an interest adverse to both. The defendant companies having executed joint and several bonds to an amount exceeding $200,000,000 for the purchase of the Burlington shares, the control of the direction of one of the defendant railway companies by Union Pacific interests would impose upon the other the burdens of the joint obligation, and take from it to a great extent the benefits to be derived from the purchase. Until J. P. Morgan & Company and Mr. Hill learned of the purchase by Union Pacific interests of a majority of the Northern Pacific stock, there was no purpose on the part of either of them to increase their holdings in that stock, which at the time did not exceed $26,000,000 out of $155,000,000 total outstanding stock of that company. The Union Pacific purchased about $37,000,000 common and $41,000,000 of preferred. The preferred stock was subject to retirement under the provisions of the Northern Pacific charter and stock certificates. The additional purchase of $15,000,000 was made by J. P. Morgan & Company with an understanding with Mr. Hill, and the stockholders named, that they would hold the Northern Pacific common they then owned. That understanding related solely to the opportunity of acquiring a majority of Northern Pacific common, upon the retirement of Northern Pacific preferred, as it was believed that the latter could, at the option of the company, be retired January 1st, 1902. The organization of the Northern Securities Company,

or any other investment company to hold Northern Pacific shares, had not then been thought of or discussed.

MR. HILL:

Q. About what time did you learn of the large holdings of the Union Pacific or the Oregon Short Line?

A. Early in May is my best recollection.

Fol. 180, p. 46.

Q. On and prior to May 7th, 1901, how much stock par value did you and your associates hold in the Northern Pacific, that is, of the common stock?

A. I should say in the neighborhood of eighteen or twenty millions.

Q. And on and about that time, how much of the common stock of the Northern Pacific did J. P. Morgan & Co. hold?

A. Seven or eight millions; they held or controlled it.

Q. And subsuquent to that time, May 7th, and before May 9th, did J. Pierpont Morgan & Company, or did you and your associates, acquire further Northern Pacific common?

A. The members of the firm asked me if myself and friends would hold the stock and not sell out. I told them we would, and they went into the market and bought some fifteen or sixteen millions. My recollection is on Saturday and Monday prior to the 9th of May.

Q. Then prior to the morning of May 9th you and your associates, J. Pierpont Morgan & Company and other associates held somewhat exceeding forty-two millions par value?

A. Something less than forty-two millions—in that neighborhood.

Fol. 184 to fol. 186, p. 47.

Q. When did the retirement of the Northern Pacific preferred stock come up between you and your associates and J. P. Morgan & Company?

A. I don't know when it was first mentioned. It was always understood from the time of the reorganization, that the preferred stock would be retired, and that there would be one kind of stock.

Q. But what I mean is after, say May 9th, was there any definite plan between you and your associates and J. Pierpont Morgan & Co. with reference to the retirement of the preferred stock?

A. I think that between May 1st and the time they made up their minds to buy the control of the common, that it was decided to exercise that privilege.

Q. And that was decided upon between you and your associates and J. Pierpont Morgan & Company?

A. No; they simply said that that could be done, and they would do it. They wouldn't hand over control of the property. Mr. Morgan had a good deal of feeling that the Northern Pacific had been a difficult property to keep on its feet and get it on its feet. His name was connected with it, and he had a good deal of pride in not handing it over to a rival.

Fols. 251–253, p. 64.

Q. And having a complete majority of the common stock, that would give you and your associates, and Mr. Morgan and his associates, complete control of the Northern Pacific?

A. Of the Northern Pacific, through a majority of the common stock.

Q. Yes; that is what I mean.

A. And the Great Northern had a very direct interest in knowing that the control of the Northern Pacific was not going to be vested in the friends of the Union Pacific, because, if that was the case, the Northern Pacific, owning one-half of the control of the Burlington, with the control of the Northern Pacific in the hands of the Union Pacific, the Great Northern would have had to go into the hands of the Union Pacific.

Q. Now, Mr. Hill, when subsequent to this determination to retire the preferred stock was it definitely decided upon to retire?

A. Before myself and friends would agree to hold our Northern Pacific we had the promise of Morgan & Company that the preferred would be retired.

Fols. 254, 256, p. 65.

Q. Well, you and Mr. Morgan had that understanding that it should be done?

A. Mr. Morgan was abroad. His partners were at home and I stated to them, if you will retire that pre-

ferred stock under the conditions under which it was issued, we will not sell our stock—we will co-operate with you.

Q. And it was upon that agreement and understanding that you and your associates continued to hold the common stock?

A. As I testified before, it was a very important matter to the Great Northern. It was a question whether we controlled our property or whether the Union Pacific controlled it through the Burlington and Northern Pacific. If that stock had not been redeemed, and the Union Pacific controlled the Northern Pacific and half of the Burlington, they would very soon have controlled the Great Northern.

Fols. 258, 259, p. 66.

MR. STEELE:

Q. When was it that your firm (J. P. Morgan & Co.) and Mr. Hill had their first conference relative to standing together in the matter of their Northern Pacific holdings?

A. I do not recollect that I have testified that there was such a conference.

Q. Were you present at any such conference on or about May 1st, between some members of your firm and Mr. Hill regarding Mr. Hill's holding or retaining his holdings in Northern Pacific?

A. I certainly had conferences with Mr. Hill on that subject. The substance of it was that there had been large purchases of Northern Pacific stock in the market, and we were questioning whether ourselves and Mr. Hill and our friends held an actual majority of the stock, either common or preferred.

Fol. 1116 to 1120.

Q. What I am more particularly anxious about, at the present time, is these conferences your firm had with Mr. Hill, and just what agreement or understanding you reached at those conferences between you, representing yourselves and friends, and Mr. Hill, speaking for himself and friends?

A. I don't think there was any agreement at all. It was understood, and we certainly expected, that Mr. Hill and his friends and our friends would hold their Northern Pacific common stock. There was no agree-

ment with them to do so, and there was no obligation to do it if they didn't want to.

Fol. 1122.

MR. MORGAN:

Q. When did you first hear that somebody else was trying to buy the stock of the Northern Pacific?

A. It must have been the last of April or the 1st of May (Mr. Morgan was in Europe). When I heard that, I felt in this position: We had reorganized the Northern Pacific. We had placed all the securities of the Northern Pacific, and I knew, as I had always supposed, that there were people—friends of ours and other people—who held practically enough Northern Pacific—we always supposed we had with us people upon whom we could depend to protect our moral control of the property—and consequently, when that news came to me, I hadn't any doubt about the fact of the matter, and at the same time this news came so strong, whoever had acquired it, I felt something must have happened. Somebody must have sold. I knew where certain stocks were, and I figured it up. I feel bound in all honor, when I reorganize a property, and am morally responsible for its management, to protect it, and I generally do protect it; so I made up my mind that it would be desirable to buy 150,000 shares of stock, which we proceeded to do, and with that I knew we had a majority of common stock, and I knew that actually gave us the control, and they couldn't take the minority and have it sacrificed to the Union Pacific interests.

Fols. 1341–1346.

Union Pacific interest promised to give proxy to Morgan to vote its Northern Pacific shares at the next annual election of directors. In doing this there was no thought of uniting the ownership of a majority of Great Northern and Northern Pacific shares, or of organizing the Northern Securities Company. It was done solely to allay public excitement and relieve a strained financial condition.

There was no agreement as to who should be selected as directors of Northern Pacific or Burlington.

On and shortly after the 9th day of May there was a very strained financial condition. Bankers and brokers were deeply interested, and much anxiety over the situation prevailed, not only in New York, but in London and on the Continent. The situation was brought about or aggravated by short selling of Northern Pacific stock. Many had sold Northern Pacific stock which they did not own, and they could not make delivery, and that made extremely high prices. This led to two or three meetings for the purpose of discussing some plan for relieving the situation, and resulted in a promise by the Union Pacific interest to give a proxy to J. P. Morgan to vote the Northern Pacific stock held by that interest, at the election of the Board of Directors of the Northern Pacific Company, at its next annual meeting.

MR. HILL:

Q. Was there a conference or meeting between you and Morgan & Co. and Kuhn, Loeb & Co., or anybody representing them?

A. There might have been more than one meeting; possibly there were several meetings. There was a very strained financial condition. People were failing and the trouble was very great. Something had occurred that never had happened in New York before—an attempt to buy a control of one hundred fifty-five millions of stock in the market and the high price caused people to sell stock they did not own. The bankers and financial men of every description were deeply interested, not only in New York, but in London and in financial centers on the Continent, and the result was, I think, two or three meetings. I know certainly there was one between the bankers at that time. The Union Pacific people claimed that they had the control by the ownership of a majority of the

stock of the Northern Pacific Railroad. That was not conceded by Mr. Bacon and Mr. Steele, because they knew they held, as long as myself and friends held our stock, a majority of the common stock, which would control the property. They made an agreement that as far as the election of the directors was concerned they would leave it to Mr. Morgan to name the directors, and that was done.

Fols. 195–197, p. 50.

Q. Was not the matter that was under discussion between you gentlemen, that led up to the appointment of Mr. Morgan as arbitrator, the respective claims as to the control of the Northern Pacific?

A. No; the thing that led up to that was the bankers' anxiety to allay this terrible condition, and they wanted to know how it might be done, and, as I understand it, the other people waived their control. They said, we will leave the matter to Mr. Morgan, and let him name the board of directors, and we will vote for them or send a poxy.

Fol. 237, p. 61.

MR. STEELE:

Q. Were you present at the conference of May 9th, at which it was decided to leave the election of the board of directors of the Northern Pacific to Mr. Morgan?

A. I was present, but it wasn't May 9th. It was about a week or two later.

Q. Who were present at that conference?

A. Mr. Hill, Mr. Harriman, Mr. Schiff, Mr. Bacon and myself, I think.

Q. What was the substance of the negotiations that were had at that conference?

A. I shall have to go back a little to answer your question fully. On the 9th of May there was a great disturbance in the stock market here, and the newspapers were full of stories of a great contest for the control of the Northern Pacific between important financial interests. They had succeeded in creating a condition of great excitement in financial circles. People were in danger of failure. There was a lack of confidence around, and the purpose of this conference was to devise a statement, that could be made public, assuring the public generally that they were mistaken,

and there was no such trouble on hand. The conference was very brief. I think it lasted not more than ten or fifteen minutes, and Mr. Harriman, I think it was, suggested that the purchase of Northern Pacific stock, which had been purchased by or in their interest. They were quite willing to give Mr. Morgan a proxy, to let him fix the composition of the board of directors of the Northern Pacific in the autumn, and they thought that would remove any question in the public mind about any friction or contest between different interests.

Fols. 1141, 1148.

There was no agreement or understanding as to the composition of the board to be named by Mr. Morgan.

MR. HILL:

Q. Was there or was there not any agreement at this conference, at which Mr. Morgan was appointed arbitrator, with reference to naming the present board—that is, the *personnel* of the board should be changed?

A. There was no agreement stipulated for retaining the board or changing the board. I remember Mr. Bacon saying, if we leave it to Mr. Morgan, Mr. Morgan must have the entire power to say who shall be nominated.

Fols. 228–229 p. 58.

Q. Was there, at that conference, any agreement among the parties to it as to the Union Pacific being represented on the board of the Northern Pacific?

A. There was not.

Q. No understanding with reference to that?

A. None whatever. I remember some discussion, not as to the question of Union Pacific, but as to the suggestion of some names. Mr. Bacon said he would not consider it at all, on any other basis than that Mr. Morgan should nominate the board, and if you are willing that he shall nominate the board we will agree to it.

Q. When you say there was some suggestion made with reference to the directors, do you mean to say that Mr. Harriman or Mr. Schiff insisted?

A. I think that they named or suggested some names, and they were refused.

Q. And the final agreement then was that Mr. Morgan should have the right and power to absolutely name the board of directors of the Northern Pacific?

A. That was the understanding or the conclusion arrived at; it hardly took the form of a final agreement.

Q. Well, you broke up with that understanding, didn't you?

A. Yes, that is right, and I think it was practically carried out on that line, and the disturbance on the street adjusted itself very quickly.

(Fols. 234 to 236, p. 60.

MR. MORGAN:

Q. On your return (from Europe), did you have any conference with Mr. Hill or his friends on the subject of the control of the Northern Pacific, or any arrangement to quell the uneasiness that had been in the stock market?

A. Now, you come to another subject—the public feeling in relation to the transaction.

Q. Yes, I know they were anxiously awaiting your return.

Q. Well, as I told you before, we bought that stock in good faith, feeling bound in honor to protect the minority stockholders. We didn't know who they were, or anything about it. We knew perfectly well that if the Union Pacific was to acquire, or had acquired, a majority, there was certainly a minority we were bound to protect, and this stock was purchased for that purpose. But subsequently came up another question. The people at large, those who didn't know Northern Pacific, or Union Pacific, or anything else, became very much alarmed, fearing that there was going to be a great contest over this thing, which would bring in active antagonism what they deemed the important financial elements of the street. That is what they talked about. They were going to have a battle in Wall Street, and it had spread to such an extent that it became absolutely essential that something should be done. That was before I returned. It had taken some shape. Something should be done to allay that public excitement and they had several conferences. I was not here and don't know anything about how they were

brought about, or whether they were held, or who was present, or anything of the kind in relation to them. But finally a paper, at least not a paper, but an agreement, or whatever it is, an understanding, was arrived at which was published in the papers, that there was nothing of that kind; that the election to be held in October of the board of directors of the Northern Pacific would be left to me to decide; subsequently the Morgan interests, as they were called, should be left independent to manage that property, and that was decided upon. When I got back I found that this feeling had not entirely subsided, and there was still a great deal of anxiety, so I thought it was best to act at once, and I drew up a paper—stating who I thought should compose that board and sent it to the Union Pecific interests, or the people who had signed this, J. P. Morgan & Co. and others, and that was carried out. It was thought best that the thing should not wait until October; in other words, better have the changes made at once in order to show there was no hostility, and, consequently, I suggested to some of the directors that they had better make the change then in the board instead of waiting until October, and that was done, and that seemed to suit the people's mind a good deal, and the thing simmered and died out—that public excitement.

Fols. 1355 to 1360.

Q. Did you consult Mr. Hill about that?

A. I told him what I was going to do.

Q. You did not consult with him?

A. No, I did not think anybody had anything to say about it but myself. They had been kind enough to trust me in the matter, and I did not consult Mr. Harriman, and I don't think I consulted anybody; at least, if I did, I did not consider it in any way that made it a factor in the case at all. I wanted to be in a perfectly independent place. I felt that I was acting in a fiduciary capacity to allay this feeling, and I was acting without any influence from anybody. I don't think I satisfied anybody, but I accomplished the object.

Q. Mr. Morgan, you know that the Union Pacific, of course, was a competing line with the Burlington. You know that it had attempted to wrest your property away from you; what was the object in putting their representatives on the board?

A. Simply to show that there was nothing that the Northern Pacific management, or J. P. Morgan & Co.,

or anybody, which had bought the Burlington, to show that they were acting under what we know as a community of interest principle, and that we were not going to have that battle on Wall street. There was not going to be people standing up there fighting each other.

Fols 1363–1365.

MR. STEELE:

Q. Were you aware that at the time Mr. Harriman was placed on the board of the Northern Pacific?

A. I was. I think I was present at the meeting when he was elected.

Q. Five directors had resigned or retired at that time?

A. Yes, sir.

Q. And five new ones were selected and appointed by Mr. Morgan?

A. Suggested by Mr. Morgan.

Q. Do you know whether there was any controversy or understanding relative to Mr. Harriman's being placed on the Northern Pacific board prior to that time?

A. I do know absolutely there was not.

Q. Do you know how he happened to be placed on the board of directors of the Burlington?

A. I do.

Q. State how it was.

A. There had been some apprehension, I think, in the minds of Mr. Harriman and some of his friends, that difficulties might arise through the fact that the Great Northern and Northern Pacific had purchased the Burlington road, and it was a menace to the Union Pacific. I talked it over, I think, with Mr. Morgan, and said, "Why not let us suggest that Mr. Harriman go on the board, and he can see there is nothing intended as a menace in any way?" and he approved of the idea, and I don't know whether I made the suggestion or whether Mr. Bacon did, when the Burlington meeting came around, that Mr. Harriman should be elected a director of that board, and he was, at any rate, elected at that meeting.

Q. Did the same thing hold good in the election of George J. Gould to the same board?

A. Yes.

Q. Mr. Gould is also a member of the Union Pacific board, is he not?
A. I think he is.
Fols. 1169–1174.

Third Finding.

"SUBSEQUENT TO THE ACQUISITION OF THE STOCK OF THE BURLINGTON COMPANY, AND IN THE SUMMER OF THE YEAR 1901, CERTAIN LARGE AND INFLUENTIAL STOCKHOLDERS OF THE NORTHERN PACIFIC AND GREAT NORTHERN COMPANIES, WHO HAD PRACTICAL CONTROL OF THE TWO ROADS, AND WHO HAVE BEEN MADE PARTIES DEFENDANT TO THE PRESENT BILL, ACTING IN CONCERT WITH EACH OTHER, CONCEIVED THE DESIGN OF PLACING A VERY LARGE MAJORITY OF THE STOCK OF BOTH OF THE LAST-NAMED COMPANIES IN THE HANDS OF A SINGLE OWNER. TO THIS END, THESE STOCKHOLDERS ARRANGED AND AGREED WITH EACH OTHER TO PROCURE AND CAUSE THE FORMATION OF A CORPORATION UNDER THE LAWS OF THE STATE OF NEW JERSEY, WHICH LATTER COMPANY, WHEN ORGANIZED, SHOULD BUY ALL OR AT LEAST THE GREATER PART OF THE STOCK OF THE NORTHERN PACIFIC AND GREAT NORTHERN COMPANIES. THE INDIVIDUALS WHO CONCEIVED AND PROMOTED THIS PLAN AGREED WITH EACH OTHER TO EXCHANGE THEIR RESPECTIVE HOLDINGS OF STOCK IN THE LAST-NAMED RAILROAD COMPANIES FOR THE STOCK OF THE NEW JERSEY COMPANY, WHEN THE SAME SHOULD BE FULLY ORGANIZED, AND TO USE THEIR INFLUENCE TO INDUCE OTHER STOCKHOLDERS IN THEIR RESPECTIVE COMPANIES TO DO LIKEWISE, TO THE END THAT THE NEW JERSEY COMPANY MIGHT BECOME THE SOLE OWNER OF THE WHOLE OR AT LEAST A MAJOR PORTION OF THE STOCK OF BOTH RAILROAD COMPANIES."

Fol. 1704.

This is another finding contrary to the evidence. The stockholders referred to did not have practical control of the two roads. They owned about one-quarter of the stock the Northern Pacific and Great Northern companies;

they had no interest in or control of stock held by other stockholders. There was no concert or agreement between them with a design of placing a large or any majority of the stock of both companies in the hands of a single owner. There was no understanding that they would use their influence to induce other stockholders in the respective companies to transfer their shares to the Northern Securities Company. Not one of them did in any way influence, or seek to influence, any shareholder of either of the defendant companies to sell his shares to the Northern Securities Company. What was done, all that was done, by whom it was done, and how and why it was done appear in the fullest detail.

Organization of Northern Securities Company.

The company was organized under the laws of the State of New Jersey, which provide that:

"Any corporation may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock, or any bonds, securities or evidence of indebtedness created by any other corporation or corporations of this or any other state, and, while owner of such stock, may exercise all the rights, power and privileges of ownership, including the right to vote thereon."

The persons who formed the corporation paid into the capital of the company a sufficient amount to qualify it to do business, and filed in the proper office a duly executed certificate of incorporation, paid the statutory fee, and the certificate was placed upon the public records. These acts put the organization of the Northern Securities Company, as a corporation of the State of New Jersey, beyond question in any place, save

the Courts of that State, and by any person, save the State itself, in some direct proceeding brought for the purpose.

The powers conferred upon this company by the certificate of incorporation are limited to buying, owning and selling securities of all kinds, and buying, selling, owning and voting stock of other corporations, and to aiding in any manner, by pledging its credit, any other company whose stock or securities it holds. It is not a railroad company. It is not empowered to own, hold or manage railways, mines, factories, stores or farms, nor to direct the management of any other corporation. It has no power as respects the defendant railway companies, other than the voting power of the shares it owns in electing a separate board of directors for each company, for the boards must be separate under the laws of the States of Minnesota and Wisconsin. It is a mere investment or financial company having no power except such as is held and exercised by financial companies the world over.

Only eight or ten out of eighteen hundred Great Northern and thirty-six hundred Northern Pacific shareholders were consulted concerning the organization of the Northern Securities Company. The aggregate holdings of the shareholders consulted did not much exceed one-fourth of either Great Northern or Northern Pacific shares, and no shareholder of either company, except those consulted, had knowledge of any plan to organize the Northern Securities Company, or of its organization, until it had commenced to do business.

There were over eighteen hundred Great Northern shareholders, owning over one hundred and twenty-three millions outstanding Great Northern stock (fol. 2769). There were thirty-six hundred Northern Pacific shareholders, owning one hundred fifty-five millions Northern Pacific stock (fol. 3406). Mr. Hill and the other shareholders named, whom he consulted concerning the organization of the Northern Securities Company, did not own or control much to exceed one-fourth of the capital stock of the Northern Pacific Company or of the Great Northern Company (fols. 2731, 2734, 2770). No shareholder of either company, except the eight or ten shareholders referred to, was at any time consulted respecting the organization of the Northern Securities Company or the sale of stock to it. The control of the Northern Pacific Company mentioned as attached to the ownership of the forty-two millions Northern Pacific common held by Mr. Hill and stockholders referred to, and J. P. Morgan & Company, meant no more than this: If the preferred stock of that company should be retired, and an equal amount of new common should be issued in its place, and if the new common so issued should be offered to the holders of the old common in proportion to their holdings, and if every one of the holders of the forty-two millions of the old common should be willing to take his allotment of the new and be able to raise the money to pay for it, then the holders of the forty-two millions would, with their acquisition of new stock, in the aggregate own a majority of outstanding Northern Pacific stock. It does not appear that any agreement or understanding was ever had or suggested on this point.

A part, but not the chief feature, of the plan

of organizing the Northern Securities Company was a corporation that would have the legal right to acquire, own and dispose of as many shares in the Northern Pacific and Great Northern Companies as the owners should see fit to sell, and at prices and upon terms the purchasing company would accept. As to the Northern Pacific it was hoped and desired that at least a majority would be acquired, not so much to get control of the Northern Pacific into the proposed company as to keep it out of another company, with interest adverse to building up interstate and international transportation via Puget Sound.

The project of a holding company which finally developed in the formation of the Northern Securities Company had its inception years ago, among eight or ten Great Northern shareholders, with a view of keeping their holdings together so as to secure the continuance of the policy which had made the Great Northern Railway Company successful. It was thought that if a holding company should be formed to which they might transfer their individual shares, the shares would likely be held together so long as the majority in the holding company should wish, and this would give stability to the policy of the company, and aid it in financial operations, and maintain the value of their investments. It was late in the summer of 1901 before the said Great Northern shareholders thought of selling their Northern Pacific stock as well as their Great Northern stock to the proposed holding company.

Until after June 1, 1901, there was no plan or purpose of Mr. Hill and the shareholders named to organize an investment company to buy Northern Pacific shares; and, for a considerable time after that date, the plan was limited to the Northern Pacific stock held by Mr. Hill and the eight or ten shareholders whom he consulted.

MR. HILL:

Q. In planning and carrying out the purchase of the Burlington shares, was it any part of that scheme, so far as you know, that the shares of the Great Northeren and Northern Pacific Companies, or any of those shares, should be put into a holding company?

A. That was no part of the Burlington transaction; it was not considered. I don't know that it was thought of. I know it was never discussed, and I don't think it was thought of or cut any figure whatever in the Burlington purchase. Some of the people connected prominently with the Northern Pacific recognized the advantage of a line to Chicago, and wanted to consider the purchase of another railway that was offered to them, or, as I understand, was offered to them if we would join. It would not answer our purpose. It practically did not reach anything except Chicago; did not reach St. Louis; did not reach the great markets and material that we wanted to reach, and it was not seriously considered. The question of the Northern Pacific and the Great Northern ever being put into a common ownership was not thought of in that connection, nor until long afterwards.

Fols. 2720–2722.

Q. At the time of making the Burlington purchase, was there any purpose on your part, or so far as you know on the part of your associates, or Mr. Morgan and his associates, of increasing your holdings of Northern Pacific stock so as to obtain a controlling majority of that stock?

A. There was no effort made to increase the holdings of the Northern Pacific by the stockholders of the

Great Northern that I know of, and I am very well satisfied had such been the case I would have known of it. In fact some of them had sold their stock as the prices advanced. As to Mr. Morgan's views about increasing his Northern Pacific, I don't think Mr. Morgan's people increased their holdings of Northern Pacific up to or during the time the Burlington transaction was being considered.

Fols. 2723, 2724.

Q. State whether or not a suggestion was made at that meeting (directors' meeting Great Northern, authorizing the Burlington purchase) that, in order to protect the Great Northern Company, the control of the Northern Pacific common stock should be acquired in its interest.

A. *As I remember it, one of our directors raised a question that inasmuch as the purchase of the Burlington stock and the creation of a bond to pay for it involved the joint and several liability of the entire amount of the purchase, it was a matter of consequence to the Great Northern to know that the Northern Pacific would not pass into the hands of people who might be interested in other directions, in developing in other directions or other sections of the country; and I remember I answered that with what myself and friends held at that time, and what Morgan & Company held, we would have somewhere in the neighborhood of 35 or 40 millions of the stock of a total of 155 millions, which was larger than is usually held in any of the large companies. I did not think at the time that it was at all likely that anybody would undertake to buy in the market the control of 155 millions of stock.*

Fols. 2725–2727.

MR. MORGAN:

Q. When did you first hear of the Northern Securities Company?

A. Just a few days before it was organized.

Q. You hadn't been consulted about it previous to that time?

A. In what way, about the Northern Securities Company?

Q. Yes; about the advisability of forming such a company.

A. No; do you want me to tell you about the Northern Securities Company? Have you got through with the Burlington? I mean let us finish one. Don't you think it would be as well to finish one thing? There is no connection between them; consequently, I would prefer it. I don't want to convey the impression there is any connection between the two, because there is no more connection between the Burlington and the Northern Securities Company than there is between New York and Kamschatka.

Fols. 1332, 1333.

MR. HILL:

Q. What steps, if any, had been taken by you and your associates and Mr. Morgan and his associates with reference to the organization of the Northern Securities Company prior to November 13, 1901?

A. The Northern Securities Company, or a company of that character, had been considered by the large shareholders of the Great Northern Railway Company for several years.

Q. For what purpose?

A. For the purpose of combining their interest in the property. Some of them were very old men and they had always acted together and in harmony, and they desired to perpetuate that action.

Q. What amount of stock, par value, of the Great Northern Road did those men that you now speak of hold prior to November 13, 1901, in the Great Northern Road?

A. On the 1st of November, I should say they held somewhere from thirty-three to thirty-five millions.

Fols. 324–326, p. 82.

MR. CLOUGH:

Q. During your relation with the great Northern Railway Company, was the subject of organizing what we call a holding company, or making use of one, mentioned in your presence and discussed by Mr. Hill, Mr. Kennedy, Mr. James and other Great Northern shareholders?

A. Yes, sir, those suggestions and discussions, to a certain extent, began years ago.

Fol. 3104.

Q. State the purpose of organizing or making use of such company ?

A. The gentlemen who were to be considered in that connection, and whose co-operation was desired and intended, were about eight or ten men who had originally gone into the St. Paul and Pacific securities along about 1875, when the lines were in a state of bankruptcy. They had retained their interests in the property, and increased them as time had gone by, with the result that they had made very large gains, * * * and it was the desire of those gentlemen, in the event of any of them passing away, that as they had co-operated together, and acted in view of the mutual and common interest in the past, that their stock should be put in a position so that the stock of those parties in the future would stand in about the same or similar relation to each other that they had in the past ; that the value of the securities should be preserved, as far as possible, by a continuation of the policy of building up the property of the company, and in event of a sale of the holdings of any of them that those of the rest of them should be treated in the same way, and be subject to the same conditions. That was the general idea.

Fols. 3106-3109.

MR. HILL :

Q. At the time of the organization of the Northern Securities Company were these things that you have told us the only objects or purposes that you had in mind at that time ?

A. The action in buying the majority of the stock of the Northern Pacific in the market in April or May, or both, brought the question up more strongly than before as to the necessity of the Great Northern old shareholders, who had been continuously connected with the property from the beginning, making their holding together permanent, and, I think, in June, somewhere about the 5th or 6th of June, speaking from recollection, Mr. Kennedy, on his return from Europe, discussed the matter with me, going over the entire situation ; the relations of the Burlington ; the relations growing out of the Burlington ; the relations growing out of the large purchases by the Union Pacific interests of Northern Pacific ; and suggested

whether we should not include in our holding company our holdings in the Northern Pacific.

Q. And for the same purpose?

A. For the same purpose, so that we would all act together and no one would sell out or leave the others. We would all act together.

Q. For the purpose of unifying the interests that you had in the two roads?

A. Yes, sir; for the purpose of unifying the interests in each road; because when the Burlington was transferred or sold to the Northern Pacific and the Great Northern jointly, our owning an equal share in the company, it was a matter of great consequence to the Great Northern as to who would own the stock of the Northern Pacific, or control the Northern Pacific, and some of our shareholders—some of them are 86 years old, others are more than 80, and so on—they might have concluded that they would sell their stock, and it might have made a difference as to the majority of the common stock.

Q. Of the Northern Pacific?

A. Of the Northern Pacific. If the control of the Northern Pacific had passed to the Union Pacific, as a matter of influence. The control of the Great Northern would have passed to the Union Pacific, because we would not have held it a day longer than we could have sold it. You can readily see that we didn't want to hold a line from Lake Superior and the Twin Cities to Puget Sound, with all the rest of the roads in the United States in a position to fight us and without power to fight back.

Fols. 327–332.

Q. What injury did you consider was likely to result to the stockholders of the Great Northern Company, or the stockholders of the Northern Pacific Company, or those corporations, if a majority of the stock of the Northern Pacific, or a controlling interest in that company, should be obtained by a hostile railway interest?

A. With the Northern Pacific as a half owner in the shares of the Burlington, and responsible for one-half of the purchase price of these shares, the transfer of the shares of the Northern Pacific, or the control of the Northern Pacific, to an interest that was adverse or an interest that had greater investments in other directions, the control being in the hands of com-

panies whose interests would be injured by the growth and development of this country, would, of course, put the Great Northern in a position where it would be almost helpless, because we would be, as it were, fenced out of the territory south which produces the tonnage we want to take west, and which consumes the tonnage we want to bring east, and the Great Northern would be in a position where it would have to make a hard fight—either survive or perish, or else sell out to the other interests. The latter would be the most business-like proceeding.

Fols. 2751, 2753.

Q. Well, if, say, the Union Pacific had got physical control of the Northern Pacific, as it got actual control of a majority of its combined capital stock; suppose it had gone on and got, as you feared it might, or anticipated it might, physical control of the Northern Pacific property, they could not have carried lumber any cheaper to the East, or cotton any cheaper to the West, than you could? It would not have crippled you in that respect, would it?

A. How would we get to the prairies of Nebraska, Kansas, Iowa and Illinois?

Q. Just as you always have—by all the lines of travel that are open to you?

A. They are not.

Q. Six lines out of here (St. Paul)?

A. Any one of those lines, or all of them, could at any moment withdraw their joint tariff from us. We could not control the business a day longer than they were willing we should, and we could not undertake to build up a great, permanent interstate and international business on any such basis. I think it would be ridiculous—the statement of it.

Fols. 2930-2932.

Q. Was there any other motive, Mr. Hill, in having the Northern Securities Company acquire a majority of the stock of the Northern Pacific Company—was there any other motive in that than the intention to defend and protect the interests of the stockholders and this enterprise which you had undertaken?

A. The object and the intent was to defend the property that otherwise would be destroyed, both of the Northern Pacific and the Great Northern. When

I say destroyed, there would be something left, but the main plan would be destroyed; there would be something left, but the property would be incapacitated from doing what it was intended to do and what it was quite able to do.

Q. Was there any intention or purpose on your part, or on the part of any one else, so far as you know, in forming the Northern Securities Company, to restrain trade or commerce among the states or with foreign nations, or at all?

A. There was absolutely none whatever, and that view of the case never occurred to us. On the contrary, it was constantly in our minds that it was going to be the most effective way of developing and increasing commerce between the states and international commerce. And it was necessary, if we were to bring this enormous business to the eastern markets—it was necessary that we should pretty soon be able to reach some point where there was a market, where people would buy our products, and in the growth of that business our increased earnings would put us on a firmer basis and in a better position to make lower rates on the local traffic of our line.

Fols. 2757–2760.

Q. What was the purpose after the purchase of the Burlington Company, and after the very large purchases of Northern Pacific stock made in the Union Pacific interests—what was the purpose, after that time, of you gentlemen who promoted the Northern Securities Company, in forming that company, and putting into it a majority of the stock of the Northern Pacific Company?

A. We were particularly anxious to put a majority of that stock where it could not be raided again as it had been. We wanted to put it in a corporation that was not a railroad company—a company that would hold it as an investment, and the larger the company the more difficult it would be to secure a majority of it. Then, again, a reason why we preferred an investment company: railroad charters, I think, I may say almost entirely, are drawn or granted on terms that do not permit railroad companies to buy the shares or own the shares of investment companies. * * * We were advised that we would be safer with the shares held by an investment company, the stock of which could only be held by individuals or by corporations

that were not railway companies, and to that extent we would be more free from such raids by interests that were anxious to destroy or restrict the growth of this country—such raids as had been made by the Union Pacific interests, so-called.

Fols. 2748–2751

MR. MORGAN:

Q. When did you first hear of the plan to organize the Northern Securities Company, or a securities company of any kind, or a holding company?

A. A securities company in connection with the Northern Pacific? It was a long time after I came back.

Fols. 1369–1370

Q. By whom was the matter first brought to your attention?

A. I think it was rather in my own mind, as far as the Northern Pacific was concerned.

A. Well, as far as the Great Northern was concerned, when was that first suggested?

A. I had heard it discussed for a year or two.

Q. Had you talked with Mr. Hill generally about it?

A. I think I had. That is, not in any detail, but with the exception of being to a certain extent a stockholder in the Great Northern. I talked to him on that subject.

Q. And that was a separate holding company for the Great Northern?

A. Yes, sir.

Fols. 1370–1372.

Q. And then you had that in your mind to have a holding company for the Northern Pacific?

A. That came up after I came back. When we found ourselves in this position, with the danger, having escaped, as I thought at that time, from what I thought was a great danger; that is to say, our property being absorbed by a competing line without our knowledge or consent. It occurred to me something ought to be done to prevent that. While we chose to defend the property, I did not want it to go on indefinitely, and I thought the best plan was to go to some trust com-

pany. My idea was first to go to some trust company to take the Northern Pacific stock and hold it.

Fols. 1372–1373.

Q. For the purpose of keeping control in one place?

A. No; not alone to keep it in one place, to keep it so that the policy of the company upon which its future depended could be continued. We didn't want convulsions going on. You cannot take a company with three or four hundred millions of securities and do one thing one day and another thing another. It destroys confidence in the first place, and everything of that kind. What I wanted to accomplish was to put that stock so that it would be protected—to maintain the policy of the company as it then existed.

Q. Held in one hand, in other words.

A. No; not in one hand, because it could be held in third hands. I wanted it so that I could go to Europe, and not hear next day that somebody had bought it for the Boston and Maine, or I don't know what other company. I wanted the Northern Pacific stock put where nothing could interfere with the policy I had inaugurated and for the carrying out of which we were perfectly satisfied and morally responsible.

Q. It being the idea that the control would be in your hands?

A. It was not a question of control. It is a moral control.

Fols. 1373–1375.

How the Capital Came to be Made Four Hundred Millions.

MR. HILL:

Q. At that time (in August after Mr. Morgan's return) what amount of capitalization was either agreed on or thought to be the proper amount for the proposed company?

A. When the matter was discussed with Mr. Kennedy, Mr. James and myself in June, I think that we thought a hundred millions would cover the necessity, provided that a large number of the shareholders of the Great Northern did not deposit their shares. There was also

a good deal of hesitation; in fact, the formation of a holding company, in the first place, was discussed among a very limited number of Great Northern shareholders. The amount was comparatively small. It was the stock of those who had always been most active in carrying on the business of the company. But when it came to making a holding company that would hold the ownership of the stock held by these people, they all hesitated about forming any company to hold the shares of the Great Northern Railway in which all the shareholders might not be allowed to participate, if they so desired. And in that way it became necessary—and it was decided early, possibly in June. It had been discussed at least a year before that. I know Mr. Farrer, of the firm of Baring & Company of London, was here and he said, "No matter what you do—your company has always had the reputation of dealing with all the shareholders on the same basis—no matter what you do, try and keep that." Everybody seemed to be of the same mind, that all the shareholders might participate in any advantage that any shareholder might have so far as related to the action of those who were most active in in the company's affairs. That involved the necessity of making the capital of the holding company large enough to take in the stockholders of the Great Northern, if they elected to sell their stock.

Q. Taking that stock at the figures which had been mentioned, 180—

A. That would make 225 millions.

Q. What additional sum to those 225 millions was considered necessary on account of the holdings in Northern Pacific stock of your party and the Morgan party?

A. After Mr. Morgan's return from Europe, I bought for myself and a few friends the bulk of his holdings. I think I bought 12 millions out of the 15 millions that he had purchased in the market at cost, and with what he held made the control the Northern Pacific common stock an absolute majority, which controlled the company after the redemption of the preferred. That would take some 48 or 49 million dollars of the stock to purchuse the 42 millions of Northern Pacific common, and the additional amount that might be necessary—or rather, the amount, 225, for the Great Northern, with, say, 50 for Northern Pacific, carried it up to 275. We thought at one time of making it 300, cover-

ing these amounts and some other properties that the Northern Securities Company desired to buy.

Q. Did you at that time take any account of what ought to be provided in case of your getting additional common stock for your preferred, on the retirement of the preferred?

A. That was considered. Those steps came one after another. They were considered, I should say, after the latter part of August and prior to the organization of the company. One condition, as it took shape, called for a relative change in the plan of the stock—that is, an increase in the amount of the stock. I might answer that further, that Mr. Morgan, acting as he had been for the Northern Pacific for a great many years since its reorganization, was very urgent that whatever was done for his shares, any other holder should have the same right. That had to be considered.

Fols. 2736–2742.

Mr. Clough, fols. 3132–3140.

Neither J. P. Morgan & Co. nor the Union Pacific interests, nor the defendant railway companies, had anything to do with the formation of the Northern Securities Company. It was an affair of not exceeding ten Great Northern and Northern Pacific shareholders owning at the time not much to exceed one-fourth of the shares of both companies.

Mr. Hill:

Q. Did the Great Northern Railway Company or its board of directors or any of its officers, so far as you know, have anything to do with the organization or formation of the Northern Securities Company, or was it an affair of the stockholders alone?

A. Neither the Great Northern Company nor any of its officers, as such, had anything whatever to do with it, not any more than the most distant railway corporation in the country. Absolutely nothing. The matter of forming the Northern Securities Company

was purely of the shareholders, and limited to a very small number, I think I am safe in saying not to exceed 11 out of 1800.

Fols. 2768, 2769.

Q. About what was the general holdings of these gentlemen in the Great Northern, as you remember?

A. Between 33 and 35 millions out of a capital of 125 millions (Great Northern).

Q. What corporate action, if any, was taken by the Northern Pacific Company or any of its officers, so far as you know, in forming or organizing the Northern Securities Company?

A. I don't know that there was any, and I don't know there was any as a company. The Northern Securities Company simply bought the stock of the Northern Pacific from the people who owned it, and the corporation had nothing to say as to the disposition of the stock; the corporation didn't own any stock, or at any rate it didn't sell any stock to the Northern Securities Company.

Fols. 2770–2772.

MR. MELLEN:

Q. You are the president of the Northern Pacific Railway Co.?

A. I am, and a member of its board of directors and of its executive committee.

Q. Has the Northern Pacific Railway Company ever taken any action, or any part as a corporation, in the formation of the Northern Securities Company?

A. It has not.

Q. Has it taken any action or any part as a corporation, in the transfer of any shares of stock to the Northern Securities Company?

A. Not to my knowledge.

Fols. 3411–3413.

MR. STEELE:

Q. Did your firm have anything to do with the organization of the Northern Securities Company?

A. No, sir.

Q. That was a deal entirely outside?

A. Yes, sir.

Fols. 1153, 1154.

Q. In the organization of the Northern Securities Company did your firm speak for the majority of the stockholders of the Northern Pacific? or act at all other than for your personal interests? or did you have anything to do with organizing the Northern Securities Company other than to sell your stock to it?

A. I was about to answer, that I have already testified that we had nothing to do with the organization of the Northern Securities Company, and the first connection that we had with it was the negotiation by which we sold to it the Northern Pacific common stock which we held.

Fols. 1210, 1211.

MR. HARRIMAN:

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You did not know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock either, were you?

A. No, sir.

Fol. 3592.

The shareholders consulted about the organization of the Northern Securities Company did not have practical control of either the Great Northern or Northern Pacific Company.

The eight or ten men consulted about the organization of the Northern Securities Company discussed the matter separately and individually, and not at any meeting where they were all together. They separately owned various amounts of Great Northern stock, aggregating about twenty-five per cent. of the whole amount outstanding, and various amounts of

Northern Pacific common, aggregating about one-fourth of Northern Pacific outstanding shares. They did not own or in any way hold the control of the Great Northern or Northern Pacific Companies. In the absence of proof to the contrary, it cannot be assumed that any stockholder neglects to attend stockholders' meetings, either in person or by proxy, and to cast every vote which he is entitled to cast. There is no evidence to show that any holder of either Great Northern or Northern Pacific stock has ever failed to vote at a stockholders' meeting, either in person or by proxy, or that the selection of Mr. Hill to be the head of the Great Northern management from year to year was in any way attributable to the amount of stock owned by him, or to the support of those consulted about the formation of the Northern Securities Company.

There was no agreement or understanding between the stockholders consulted to use their influence to induce other stockholders in their respective companies to transfer their shares to the Northern Securities Company.

Of the eighteen hundred shareholders of the Great Northern Railway Company, and the thirty-six hundred shareholders of the Northern Pacific Railway Company, not to exceed ten were consulted concerning the plan of forming the Northern Securities Company, or had knowledge of its existence until after it had commenced business. There is no evidence showing, or tending to show, that any one of the shareholders consulted agreed, or even intended or expected, to use his influence to induce any other shareholder of either company to dispose of his shares to the Northern Securities Company, or that the matter was even sug-

gested, or that any one of them did at any time use his influence directly or indirectly to induce any other shareholder to transfer his shares to the Northern Securities Company.

MR. HILL:

Q. In the formation of the Northern Securities Company was there any agreement among its promoters, or any of them, including yourself, by which they, or any of them, bound themselves to transfer their stock in either railway company to the Northern Securities Company, when it should be organized?

A. There was no agreement of any kind. When I discussed the matter with these gentlemen, they said, "All right, go ahead and we will put ours in"—each man speaking for himself, and I think I saw them all separately, with one exception. I saw Mr. Kennedy and Mr. James together; both happened into my office at the same time, as was a very common thing with them. Possibly I saw Mr. Thorne and Mr. Clark together. The others I saw separately. There was no agreement, an hour—a minute, before any shareholder of the Great Northern transferred his stock; he was at liberty to turn round and go away with it.

Fol. 2777.

MR. KENNEDY:

Q. Did you hold any stock in the Northern Pacific jointly with anybody else, or did you have any agreement or understanding with anybody, as to how you should handle or sell or vote stock in the Northern Pacific?

A. No, sir; never did.

Q. Well, as far as you know, was there any agreement between these gentlemen, in their Northern Pacific purchases, that they should act together, or sell together, or vote together, or handle it together in any way?

A. There was none on my part. I never heard of any agreement of that sort with anybody.

Fols. 846–847.

Q. Do you know of any agreement between the majority stockholders of the Northern Pacific Company that they would all turn their stock in or sell it to the Northern Securities Company?

A. I know of no such agreement. Never heard of it.

Fol. 856.

MR. MORGAN:

Q. In selling the stock in Northern Pacific, belonging to J. P. Morgan & Co., to the Northern Securities Company, did your firm act by agreement with other stockholders, or did you act individually?

A. We acted individually, with the understanding that every other stockholder should have the same right, at the same price; that I have testified to already.

Fols. 1446–1447.

It was expected, but not agreed, that the Great Northern shareholders owning Northern Pacific shares, who were consulted about the organization of the Northern Securities Company, would transfer their shares to it when organized, and that J. P. Morgan & Company would do likewise. It was thought that the Northern Pacific Company had a right to retire its preferred shares on the first of January, 1902. It was known that its right to do so was disputed by the Union Pacific interest, which then held a majority of Northern Pacific shares. Should Northern Pacific preferred stock be retired through an issue of new common, the holders of the old common would have a right to their proportion of the new common, and if that right were exercised, they would acquire a majority

of the stock of the Northern Pacific Company. There was no agreement however that any one of the holders of the old shares should purchase or acquire his allotment of the new.

It was not expected that the Northern Securities Company would acquire a majority of Great Northern shares.

It has been shown that the capital of the Northern Securities Company was fixed at four hundred millions, not with the expectation that it would acquire a majority of Great Northern and Northern Pacific shares, but in order to enable it to do so, should the holders of a majority desire to sell their stock. There is no evidence of any willingness on the part of the Union Pacific interest to sell its holding until within two or three days of the date of its sale, or that before the organization of the Securities Company it had been consulted on the subject, or made any agreement in that respect. It was not thought that a majority of Great Northern shareholders would transfer their shares, because the price, 180, was ten to twenty per cent. lower than the market price, and lower than what the shares had been selling for in cash, for a long time, in the market.

MR. HILL:

Q. Now, what I wanted to get at was, whether at this time, at the end of August, when you were fixing your proposed capital for the holding company, you took into account the increase of your holding, which would or might result from a retirement of the preferred stock?

A. That had to be considered; it was considered.

Q. What was the market price of the Great Northern stock during the fall and winter of 1901?

A. I think it ran from 187 to 190 or 195. I don't think it has ever been 180 from the time the offer was made to the present time.

Fols. 2743–2747.

Q. You state in this letter (letter of Nov. 30th written in answer to inquiries made by Great Northern stockholders) "The organization of such a company has been considered for many years by the original promoters of the St. Paul, Minneapolis and Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties." What did you mean by that?

A. "The protection of their interests;" protection from the raids like the one which had been made in May previous on the Northern Pacific. Some such raid might be made on the Great Northern; and for the making permanent the general policy. The road was built with great care, with very low grades, built through a country that had very few people for a long distance west of Dakota. When we built it we had to get permission from the Government, because it was unceded land; and we had a policy; building a low grade road, a road that could move a large tonnage (if it could get a large tonnage) at a low rate, and develop the business, the country. It is true, as every one will find on inquiry, that that country has practically no manufactures, and the traffic has been confined to the natural productions.

Q. And that meant to protect and to continue the control which had carried out that policy? That is what you meant by it?

A. I may say that I think I controlled the policy of the Great Northern Railway Company and its predecessor as fully as the policy of any railway ever was controlled in this country, and I never owned over ten or twelve per cent.; I never owned a majority of the stock, but I always had a following of good loyal stockholders, and the men who were most active, covering about 33 or 35 millions out of 125 millions, practically formed the company, and they desired that their other shareholders, whoever they were, new or

old, might participate in anything that they were doing, if they thought it would be any advantage to them as shareholders.

Q. And so, in order to continue the policy which had obtained for so many years for the benefit of the company and of the public, they arranged to put their holdings into this holding corporation—these shareholders?

A. The eleven shareholders.

Q. Yes.

A. And asked that the same offer be made to all the shareholders, so that they might not be charged with any discrimination, or doing anything for themselves that they were not willing to do for all the shareholders.

Q. Now, would the policy be perpetuated, or the interest protected, if less than a majority of the stock of the Great Northern had gone into the holding corporation?

A. Oh, yes, sir.

Q. If less than a majority of the stock of the Great Northern had gone into the holding corporation, wouldn't the stock of the Great Northern have been liable to a raid by hostile or rival interests?

A. The Stockholders of the Great Northern were many in number, but we have always considered they were a very loyal list of stockholders, and we never felt that we were liable to lose control.

Q. You thought that about the Northern Pacific, too?

A. The Northern Pacific was in an entirely different position. The Northern Pacific stock, when the Burlington was bought, was selling at somewhere from 50 to 60, while the Great Northern was selling at three times that price. The Great Northern was selling at 180 or 190. A different question about getting control of the Great Northern. In answering the question it never occurred to me that we would lose control of the Great Northern, except at a price that we would be well paid if we sold. We could afford to take any price that anybody could pay to get control of the Great Northern. I think there has never been, in the past ten years, an hour when it was not true. As long as we could control the traffic and develop it, the Great Northern shareholders would be well satisfied and well paid.

Q. Then you never intended to put into the Northern Securities Company a majority of the stock of the Great Northern Railway?

A. I never did put it in. I put in a very small amount.

Q. And you thought you could protect the interests, and continue the policy, without placing in the Northern Securities Company a control or a majority of the stock of the Great Northern?

A. When we made the offer, we decided to make the offer to allow all shareholders to sell their stock on the same terms as those who had been most active—a small number of ten or eleven. It was necessary, if they were going to sell their stock, to be able to give them the Northern Securities Company stock in payment. If the question has reference to the desire or preference, I should answer that if the individual men who formed the Securities Company had their choice, and all the shareholders were there and could say, "We release you from any responsibility," we would have preferred to have had the Northern Securities Company stock restricted to the 35 millions. There isn't any question about that. I have discussed that with the shareholders many, many times. One gentleman spent an afternoon discussing with Mr. Grover; another spent an evening at my house; came from London to discuss it. So, it is not a new question with us. The question was, "Shall we make a corporation and close the door on our old associates? If we do, it is the first time that anything has ever been done in which any shareholder had the advantage over all the shareholders." And that was the reason for making the offer, and the only reason for making the offer.

Fols. 2799 to 2810.

MR. KENNEDY:

Q. It was the expectation and purpose of you gentlemen at that time, when you conceived the idea of organizing the Northern Securities Company, to acquire a majority of the stock of both roads, was it not?

A. *It was our intention to have a majority of the Northern Pacific, but as to the Great Northern, it was simply an intention to let the members in who chose to come in, and it remained to be seen whether it would be a majority or a minority.*

Q. Why did you plan on getting a majority of the Northern Pacific and not of the Great Northern?

A. Well, my idea was in consequence of what took place last May; we didn't want to be subject to such an attack as took place last year.

Fols. 772, 773.

Q. Now, it was finally determined, after it was decided to take in a majority or more of the stock of the Northern Pacific, to throw open the privilege to all the stockholders of the Great Northern to go into the Northern Securities Company?

A. Yes, sir.

Q. *And was that done for the purpose of placing a majority of the stock of the Great Northern in the Northern Securities Company, as well as a majority of the Northern Pacific?*

A. *I think not. The idea was to give the Great Northern stockholders, who might desire to come in, an opportunity to come in, that they might not feel that they were not fairly treated if certain persons went in and other persons were left out.*

Fols. 781, 782.

Q. *Did you understand that the formation of the Securities Company was in any way conditioned upon its acquiring a majority of the stock of both railroad companies?*

A. *No, sir; no such condition.*

Q. *Well, was it or was it not decided to form it whether it procured—*

A. *Whether it procured a majority or whether it did not.*

Fol. 855.

MR. CLOUGH:

A. Sometime after his (Mr. Morgan's) return, he expressed his willingness to sell his stock to a company of that character, but upon the condition that all other holders of Northern Pacific stock (common stock) should have like privileges with him, if they desired to exercise them. I might say at this time it was known, became generally known, that a plan for the retirement of the Northern Pacific preferred stock, and its replacement by new common stock, that had been conceived early in the year, would be quite surely carried out on the following January; and, when it was carried

out, there would be 155 millions of stock of one class of the Northern Pacific, and Mr. Morgan was very strenuous that when this stock was all out, if he sold his stock to the Northern Securities Company, that each of the other holders of the common stock, if he wanted to do so, should have the privilege of selling to the Northern Securities at the same rate. He was extremely insistent on that. Some of the eight or nine or ten Great Northern stockholders who were consulted in this matter had quite early taken a similar view in regard to Great Northern stock. They suggested that it had been the settled policy of the Great Northern management, that whatever benefits of any kind should be open to the holder of any of the Great Northern stock should be opened upon equal terms to all the others. There was not very much progress made with that proposition until after Mr. Morgan's return, and his insistence upon that privilege (a similar privilege for the Northern Pacific stockholders in relation to their stock,) and then it was very generally considered by these gentlemen that the arrangements for the holding company, as it was commonly called at that time, should be made large enough so as to let in, if desired, all of the holders of the Great Northern stock as well as of the Northern Pacific. *That matter was discussed from time to time, and it was believed by myself and Mr. Hill and Mr. Kennedy and some of the others who had watched things very closely, that there was very little probability of anything nearly like the whole of the stockholders of the Great Northern, at least, coming in, because that was a well established stock in the market. It had been on the market for ten years, and had a high market value and was thoroughly well known. It was held entirely by investors. There never has been any speculative movement in Great Northern stock, and it was thought, that being held that way, the holders of a well known and well-established stock would be loath to sell it and take in pay the stock of a new and comparatively unknown company.*

Fols. 3135-3139.

MR. MORGAN:

Q. When was it was first decided between you and Mr. Hill to put both stocks of these companies into one holding company?

A. Mr. Hill did not decide the Northern Pacific. I told him I thought if he was willing we would take it; and that was probably some time either just before or just after I returned from California.

Q. Then you agreed to do it?

A. No, sir; I told him that would be my decision if everything went smooth. We could not tell at that time if we were going to be able to get our charter.

Fols. 1410, 1411.

Q. If you could get your charter and all the legal formalities could be carried out?

A. He was acting for his stock and I for mine, with the condition that if the Northern Securities Company was organized the holders of the Northern Pacific stock should have the right to put in their stock the same as we did.

Q. When was it decided between you, or agreed between you, that the Great Northern would come in?

A. They were in before; I had nothing to do with that; that was all fixed.

Q That they would come into the Northern Securities Company?

A. I have already said to you that the Great Northern Company and a holding company was a thing of Mr. Hill's plan. The question simply was whether J. P. Morgan & Co. should select the Northern Securities Company as the custodian for our Northern Pacific stock or not, so that it was really Mr. Hill's plan, and the Great Northern went in before I did. I told you before, he had arranged that for his road and subsidiary companies, at least that or some holding company, so that was long before this thing came up.

Fols. 1412 to 1414.

Q. *Was the fact of acquiring a majority of the stock of both or either the Northern Pacific and the Great Northern Railway Company made a condition of the organization of the Northern Securities Company, so far as you know?*

A. *Nothing at all. On the contrary, we only wanted one.*

Q. *Was it, or was it not, determined, so far as you know, to form the Northern Securities Company without knowledge whether the company would, or could, acquire a majority of either or both of these stocks?*

A. *Nothing whatever. We had a majority of the Northern Pacific; we knew that.*

Q. *Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?*

A. *No; we did not require it.*

Fols. 1442–1444.

Fourth Finding.

"WHEN THE SECURITIES COMPANY WAS ORGANIZED, IT ASSENTED TO AND BECAME A PARTY TO THE SCHEME THAT HAD BEEN DEVISED BY ITS PROMOTERS BEFORE IT BECAME A LEGAL ENTITY.

VERY SHORTLY AFTER ITS ORGANIZATION THE SECURITIES COMPANY ACQUIRED A LARGE MAJORITY OF ALL THE STOCK OF THE NORTHERN PACIFIC COMPANY AT THE RATE OF $115 PER SHARE, PAYING THEREFORE IN ITS OWN STOCK AT PAR. AT THE SAME TIME IT ACQUIRED ABOUT 300,000 SHARES OF THE STOCK OF THE GREAT NORTHERN COMPANY FROM THOSE STOCKHOLDERS OF THAT COMPANY WHO HAD BEEN INSTRUMENTAL IN ORGANIZING THE SECURITIES COMPANY, PAYING THEREFOR AT THE RATE OF $180 PER SHARE, AND USING ITS OWN STOCK AT PAR TO MAKE THE PURCHASE. THE SECURITIES COMPANY SUBSEQUENTLY MADE FURTHER PURCHASES OF STOCK OF THE GREAT NORTHERN COMPANY AT THE SAME RATE, AND IN ABOUT THREE MONTHS HAD ACQUIRED STOCK OF THE LATTER COMPANY AMOUNTING AT PAR TO ABOUT $95,000,000, USING FOR THAT PURPOSE ITS OWN STOCK TO THE AMOUNT OF ABOUT $171,000,000. THE SECURITIES COMPANY WAS ENABLED TO MAKE THE SUBSEQUENT PURCHASE OF STOCK FROM STOCKHOLDERS OF THE GREAT NORTHERN COMPANY NOT IMMEDIATELY CONCERNED IN THE ORGANIZATION OF THE SECURITIES COMPANY BY THE ADVICE, PROCUREMENT, AND PERSUASION OF THOSE STOCKHOLDERS OF THE GREAT NORTHERN COMPANY WHO HAD BEEN INSTRUMENTAL IN

ORGANIZING THE SECURITIES COMPANY AND HAD EXCHANGED THEIR OWN STOCK FOR STOCK IN THAT COMPANY SHORTLY AFTER ITS ORGANIZATION.

"AT THE PRESENT TIME THE SECURITIES COMPANY IS THE OWNER OF ABOUT 96 PER CENT. OF ALL THE STOCK OF THE NORTHERN PACIFIC COMPANY AND THE OWNER OF ABOUT 76 PER CENT. OF ALL THE STOCK OF THE GREAT NORTHERN COMPANY."

Pp. 1704–5.

The Northern Securities Company did not become a party to any scheme. It is not an agency or association deriving its power from any contract or plan dependent upon the will of those who organized it. It is a lawful corporation, and not a fraudulent device. It is not an agency of its stockholders, or of its directors. Its directors are its officers, and their authority is derived from its charter and the Laws of New Jersey. Within its charter powers it has a lawful right to do what an individual may do. If, in the exercise of its lawful powers, it violates the law, it is subject to restraint and prosecution. On the 13th day of November, at a meeting of its Board of Directors, resolutions were adopted authorizing the purchase of any Northern Pacific shares that might be offered for sale at $115 per share. On the 14th day of November, the board adopted resolutions authorizing the purchase of any Great Northern shares that might be offered for sale at $180 per share. A majority of Northern Pacific shares was not purchased by the Northern Securities Company at $115 per share; but was purchased in one block, for a lump sum, payable partly in cash, and partly in the shares of the Northern Securities Company.

The shareholders owning Great Northern and Northern Pacific shares, who consulted about the organiza-

tion of the company, sold to it, shortly after its organization, about $30,000,000 of Great Northern stock, and about $35,000,000 of Northern Pacific common stock. J. P. Morgan & Co. sold to it about $7,000,000 Northern Pacific common stock. The price paid for Great Northern was 180 per share, and for Northern Pacific, 115 per share.

Between the 18th day of November, at which time the Northern Securities Company had acquired a majority of Northern Pacific shares, and the commencement of this suit, 1200 other Great Northern shareholders, who had not been consulted about its formation, and who did not know of its organization until after it had begun to do business, and had acquired a majority of Northern Pacific shares, sold their shares to it, separately and individually; the aggregate of such shares being about $65,000,000 and being a large majority of Great Northern stock held by the Northern Securities Company. Prior to December 11th, 1901, the Northern Securities Company had purchased not to exceed $49,000,000 of Great Northern shares, which had been transferred to it on the books of the Great Northern Company. After that date, it purchased Great Northern shares, which had not, at the time of the taking the testimony, been transferred on the books of the Great Northern Company.

MR. HILL:

Q. Shortly after the formation of the Northern Securities Company, you yourself transferred to it, sold to it, a large amount of Great Northern stock and Northern Pacific stock, did you not?

A. Yes, sir.

Q. And large amounts were sold in like manner by other holders?

A. Yes, sir.

MR. KENNEDY:

Q. And you turned in all your stock?

A. Yes, sir. I turned it in shortly after the formation of the company; about 96,000 Great Northern and 40,000 Northern Pacific.

Fol. 788.

MR. MORGAN:

Q. Did the relative proportion of 180 for Great Northern and 115 for Northern Pacific seem fair to you?

A. It did; if anything, I think the Great Northern was a little low.

Q. You, then, did acquaint yourself with the standing of the Great Northern and its history?

A. If you take the dividend and the market price of the Great Northern, and the uncertainty as to the price of the Northern Pacific—because you must remember that when this was formed, and all that sort of thing, we did not know whether we were going to be able to settle definitely with the Union Pacific interests, and we did not know either if we were going to get through the 1st of January without legal contest—and we found out from you gentlemen we came very near not doing it—*consequenty, I say the Northern Pacific got their fair share of that deal.*

Q. So the stocks did not go in on the basis of actual certainties?

A. They went in as near as possible on what we considered the market price. The price of Northern Pacific was fixed because it was the price at which we bought this stock. Undoubtedly, if that stock had not cost quite as much we would not have received as much.

Fols. 1405 to 1409.

MR. CLOUGH:

A. On the 18th of November, 1901 the Northern Securities Company purchased $37,023,000 of the common stock, and $41,085,000 of the preferred stock of the Northern Pacific Railway Company, making a total of $78,108,000 of the stock of the Northern Pacific Railway Company in one lot, for which it paid the lump sum of $91,407,500. Of this price, the Northern Securities Company paid $8,915,629 in cash, and $82,491,871 in its own stock at par. That is one trans-

action. On the 27th day of December, 1901, the Northern Securities Company purchased from the Northern Pacific Railway Company the convertible bonds, so called, of the latter company to the amount of $34,709,062.50, which it paid in cash. Within about two or three days afterwards, about the 1st of January, 1902, it caused those bonds to be converted into the new common stock of the Northern Pacific Railway Company, which it has since held. It has also from time to time since purchased small lots of Northern Pacific, for which it has paid cash.

Fol. 2606.

Q. In the answer of the Northern Securities Company it is stated that that Company has purchased and had transferred to it five-twelfths of the capital stock of the Great Northern Railway Company, and has negotiated for four-twelfths of the capital stock of that company. I should like to have you explain what is meant by the term "negotiated for" and what is the present status of that stock.

A. The total authorized capital stock of the Great Northern Railway Company is 1,250,000 shares of 100 each, of which 1,238,804 shares are outstanding. I am giving this in a way so as to make it as comprehensive as possible. Of the outstanding shares the Northern Securities Company, up to this date, (date of hearing September 25th, 1902, Fol. 33) has purchased and paid for, and transferred into its own name on the transfer books of the Great Northern Railway Company, 528,672 shares. It has also purchased and paid for, but has not had transferred into its own name on the transfer books of the Great Northern Railway Company, 458,017 additional shares. These latter shares stand on the stock books of the Great Northern Railway Company in names other than that of the Northern Securities Company.

Fol. 2594.

Q. At what time did the Northern Securities Company first have shares of stock in the Great Northern which it had purchased and paid for, withheld from transfer and placed in the hands of individuals in this way?

A. I don't remember now the precise date of the first transaction of that character, but it was some time last winter or early in the spring, as the stock was

offered for sale to the Northern Securities Company. I don't remember the date now, but if desired, I could get the date of the first transaction of that character.

Q. I wish you would get the date.

A. I will do so, and hand it to you or to the stenographer.

The witness subsequently advised the examiner that the date of the first transaction above referred to was December 11, 1901.

Fol. 2598, 2599.

Purchase from Union Pacific Interest of its Holding in Northern Pacific Stock.

On the eighteenth of November, 1901, the Northern Securities Company purchased $37,023,000 of the common stock and $41,085,000 of the preferred stock, making a total of $78,108,000, in one lot, for which it paid the lump sum of $91,407,500. Of this price the Northern Securities Company paid $8,915,629 in cash and $82,491,871 in its own stock at par. On the twenty-seventh of December, 1901, the Northern Securities Company purchased from the Northern Pacific Company the convertible bonds, so called, of the latter company to the amount of $34,709,062.50, for which it paid cash. Within two or three days afterwards, about the 1st of January, 1902, it caused those bonds to be converted into the new common stock of the Northern Pacific Company, which it has since held.

Fol. 2606.

Prior to the organization of the Northern Securities Company there was no agreement or understanding with Union Pacific interest relating to a sale of its Northern Pacific holding to the Northern Securities Company. The sale came near falling

through because of the refusal of the Northern Securities Company to accept the terms proposed. The sale would not have been made but for the fact that the Northern Pacific Company had adopted the necessary resolutions for retirement of its preferred stock, and the Union Pacific interest finally sold to avoid risk of litigation growing out of a contest of the right.

MR. STEELE:

Q. What did your firm have to do with the purchase of the Harriman interests in the Northern Pacific?

A. My impression is, it was my firm that conducted that negotiation entirely.

Q. Will you state what those negotiations were?

A. I will, as nearly as I can, and I think I know the substance of them. It was after the meeting of the Northern Pacific board, as I recollect it, at which it was resolved that the preferred stock was to be retired. Whether the suggestion came from Mr. Harriman or not, I couldn't quite say, but the question was taken up between Mr. Harriman and ourselves as to the disposition of the Northern Pacific stock which they had.

I think it was a little after the middle of November, after the meeting of the Northern Pacific board, at which it was resolved to retire the Northern Pacific stock. They expressed a desire to be allowed to part with their stock. It had become, or would become, by the retirement of the preferred stock, a minority interest, and it was rather an unsalable commodity, as the stock had practically been withdrawn from the market, and they asked us if we wouldn't undertake to get the Northern Securities Company to buy their stock. We finally agreed upon a basis by which they agreed to sell their stock for a lump sum, which was to be payable partly in cash and partly in stock of the Northern Securities Company. At that time, Mr. Harriman and his friends held both common and preferred stock, in the proportion, I think, of about 37,000,000 common to 41,000,000 preferred, in round numbers, and their proposition was to sell us that stock, in one block, for a fixed sum, which was to be paid partly in cash and

partly in Northern Securities Company stock, and we undertook to try and get the Northern Securities Company to buy that stock on those terms, we acting as bankers between them (fols. 1159, 1162).

Q. You state that the purchase of the so-called Harriman stock by J. P. Morgan & Co., as bankers, was made with the idea of a resale thereof, or an arrangement for the resale thereof to the Northern Securities Company?

A. I have stated that the idea of the purchase by J. P. Morgan & Co. of the Northern Pacific stocks held by Mr. Harriman and his friends was with the idea and undertanding that they were to be offered to the Northern Securities Company, on terms exactly the same as those upon which they were taken by J. P. Morgan & Co., and that the proceeds of the sale received by J. P. Morgan & Co., if the sale was consummated, were to be turned over to Mr. Harriman and his associates, and this is what was done.

Q. Do you know of any hitch or difficulty in the completion of doing what was done?

A. *There was quite a hitch, which arose from the fact that in our talk with Mr. Harriman and his friends we had assumed that their holdings of preferred and common stock were somewhat larger than they actually proved to be, and we had negotiated with the Northern Securities Company upon that basis. When they came to deliver the stock, which was the first time that we knew accurately just how many shares of stock they held, it turned out that they did not have quite so much as we supposed in the negotiation, and had represented to the Northern Securities Company that we did have. The Northern Securities Company consequently refused to take that amount of stock on the same basis that they had agreed for the amount which they supposed was to be delivered. We succeeded in effecting a compromise under which the Northern Securities Company accepted the amount of stock, which Mr. Harriman and his friends were able to deliver, but a substanti l reduction in the price was made, owing to the fact that the amount was not as great as the Northern Securities Company had supposed it would be.*

Fols. 1199-1203.

Q. *I understand you, Mr. Steele, that when the Northern Securities Company was organized, the so-*

called Harriman stock had not been purchased by you, or by anyone for that company.

A. *It had not been purchased by us.*

Q. *And, so far as you know, no arrangements for this sale to the Northern Securities Company had ever been made?*

A. *No, sir.*

Q. *Well, was there, as far as you know, any connection between the organization of the Northern Securities Company and the acquisition of the Harriman stock?*

A. *None whatever.*

Fols. 1204, 1205.

MR. MORGAN:

Q. Was it agreed by anyone, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific, should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation?

A. Not until after.

Fol. 1444.

MR. HILL:

Q. At the time when the Northern Securities Company was decided upon, which took place some time in the summer of 1901, to your knowledge, were there any negotiations being carried on, or had been carried on prior to that time, with Mr. Harriman, or with persons representing Mr. Harriman, or the Oregon Short Line, looking to the purchase of the entire holding of the Union Pacific or the Oregon Short Line, or Mr. Harriman?

A. There was absolutely no such negotiations, directly or indirectly, and I think there could not have been any without my knowing it.

Q. Now the actual sale of the Harriman stock—we will call the stock which stood in the name of the Oregon Short Line, and perhaps in the name of Mr. Harriman and Mr. Winslow Pierce, the Harriman interest or Harriman stock. Now, at the time of the actual sale

of that stock to J. Pierpont Morgan & Co., do I understand you to say it took place in November, 1901 ?

A. I testified as my recollection that it was sold to Morgan in November.

Q. Now, was or was not that sale the result of conferences between Mr. Harriman and J. Pierpont Morgan & Co., yourself and Mr. Schiff, of Kuhn, Loeb & Co. ?

A. No ; I don't recall conferences between myself, Mr. Schiff of Kuhn, Loeb & Co., or Mr. Harriman on that subject.

Fols. 365 to 367, p. 93.

Q. Do you know that as a part of the consideration for the sale of the Harriman stock, so-called, to J. Pierpont Morgan & Co., a large block of Northern Securities Company's stock, which was to be issued later, was to be turned over to Harriman or his associates ?

A. I knew that the stock was exchanged the same as other stock. Now, that is all the exact information I had on the subject.

Fol. 378, p. 96.

Q. Now, was there any connection whatever between the organization of the Northern Securities Company and the purchase of the Harriman stock ? That is, taking those two things together, was there any connection between those two things and the selection of Mr. Morgan as arbitrator to name the board of directors of the Northern Pacific Railway Company ?

A. There was absolutely no connection whatever. The time at which it was agreed by the banks to allow Mr. Morgan to nominate the directors was in May. The Northern Securities Company was actually formed in November. It had been discussed without any reference to Mr. Harriman's holdings, or anybody else's holding for several years, and they had no more to do with each other than you have to do with either of them.

Fol. 390, p. 99.

Q. Had you prior to November 13, 1901, any arrangement, agreement or understanding that Mr. Harriman, or of any one representing his interest or the interests of the Union Pacific Railway Company, with reference to the taking care of the preferred stock of the Northern

Pacific held by him, or the Union Pacific, or the Oregon Short Line?

A. I had no such arrangement with Mr. Harriman or any else before or after.

Fol. 268, p. 68.

MR. HARRIMAN:

Q. On or prior to May 9, 1901, had you, acting for the companies or railway interests that you represented, acquired certain stock in the Northern Pacific Railway Company, amounting in round numbers to about 78 millions dollars, par value?

A. Yes, sir.

Q. And that stock stood in your name and that of Mr. Pierce, holding it for the interests that you represented?

A. Yes, sir.

Q. Did J. P. Morgan & Company, or any member of that firm, open negotiations with you looking to the purchase or acquisition of such holdings during the fall of 1901?

A. Does it make any difference whether I opened the negotiations with them or they with me? I don't remember. It was either one or the other. The negotiations were opened. Or they may have been opened by some intermediate party. I don't remember just how it was.

Q. At what time were those negotiations opened?

A. It would be difficult for me to state within a month. It was September or October, I should think.

Q. How long did those negotiations continue before they were finally consummated?

A. I should think about a month or six weeks, possibly two months.

Q. With whom did you have your first dealings in those negotiations, if you remember?

A. I couldn't remember.

Q. Was it with Mr. Bacon of J. P. Morgan & Company?

A. I had many talks with Mr. Bacon. I had talks with nearly every member of the firm.

Q. In these negotiations were they acting for themselves, or acting with the understanding that these securities or this stock was to be turned over to some holding company when organized?

A. They never disclosed to me whether they were acting for themselves or somebody else.

Q. Before the negotiations were finally closed was it understood that you were to take some stock in a company to which this stock was to be transferred?

A. That is my recollection.

Q. And was that the Northern Securities Company?

A. It never was designated by any name.

Q. You didn't learn what company was to take it until you received the stock of that company in exchange?

A. Practically at that time.

Q. Did you understand, from the beginning of these negotiations, that this stock was ultimately to be turned over to some holding company which was to be organized?

A. No, I can't say that there was any understanding at the beginning of the negotiations for a settlement of whatever differences we might have in regard to that stock, whether it was to be taken by them or by a holding company, or how it was to be paid for. It was only towards the end, when the thing crystallized, that the suggestion was made, that payment should be made partly in cash and partly in a holding company's stock. *I think it was just toward the end of the negotiations when we were considering whether we would break away or get together on it.*

Fols. 3565 to 3571.

Q. *Well, you finally learned that the stock was in fact to be turned over to a holding company?*

A. *There never was anything on their part, it seems to me, that would lead me to infer that they were to turn that stock over to a holding company. Towards the end, when the matter crystallized, and when we were very nearly at the end of our tether, they offered to pay for these shares in the stock of a holding company so much, and so much in cash. Now, there was nothing said as to whether they would turn this stock over to a holding company, or whether they would hold it themselves; but they would give us that holding company's stock in part payment.*

Fol. 3573.

Q. *When did you first learn that this stock was to be delivered to the Northern Securities Company?*

A. *When it was delivered.*

Q. And that was the first you knew about that?
A. That is my recollection. The first I knew was when it was delivered to that company.
Fol. 3576.

Q. What did these negotiations relate to then? Whether you would surrender your stock or give it up?
A. Whether we would do anything with our stock except to stand where we were on the basis of holding preferred and common stock.
Fol. 3577.

Q. I suppose when you acquired the stock you supposed you had acquired a controlling interest in the Northern Pacific?
A. Practically that is what we thought.
Q. And did they contend that they had the right to retire this preferred stock that you held without your consent?
A. Yes, sir
Q. That contention was made during these negotiations?
A. I think steps were taken to retire it before the negotiations were ended.
Fol. 3578.

Q. And why were these negotiations pending, then, looking toward a settlement of your disputes, if you had started in to buy a controlling interest in the Northern Pacific, and supposed you had it, and no questions were raised about that retirement?
A. Well, of course, it was stated to us that this preferred stock could be retired.
Q. Who made those statements?
A. *Everybody. It was published in the papers. Statements were made by the directors and by people connected with the company, and published in the papers. I think you will find public statements were made at that time that that was the intention. But, of course, the actual steps taken for that purpose were not taken until about the time we made our trade. And if they hadn't been taken, and it hadn't been retired, we probably would have been in control.*
Fol. 3581.

Q. You understood, then, during these negotiations and prior to the time you closed the transaction, that there would be an effort to retire that stock without your consent?

A. A probability of it; yes.

Q. Did Mr. Morgan, or any of the representatives of J. P. Morgan & Company with whom you negotiated, state to you that they intended to do that?

A. I imagine they did. I don't remember just what—

Q. Well, that was one of the principal inducements that led you to finally surrender your holdings, was it not?

A. Practically.

Fols. 3582, 3583.

Q. Did they represent to you that that was the basis on which they were going to take in the stock?

A. The statement was made to me that they would put this Northern Pacific stock into a holding company, and give us, in part payment, a holding company's stock on the basis of $115 for Northern Pacific, and, if Great Northern were taken in, on the basis of $180 for Great Northern. They didn't state how much they were going to take in, or how little they were goin to take in.

Fol. 3588.

Q. Didn't you understand from their statements that the basis of exchange, if any was made, was 115 and 180?

A. Yes.

Q. That is, 115 for Northern Pacific and 180 for Great Northern?

A. Yes.

Q. Were you consulted at all regarding the formation of this holding company?

A. No, sir.

Q. You didn't know where it was going to be organized?

A. No, sir.

Q. And had nothing to do with it?

A. No, sir.

Q. You were not consulted about the retirement of the preferred stock either, were you?

A. No, sir.

Q. You made no inquiries as to where the corporation was to be formed or the amount of its capital stock?

A. I knew, of course, the amount of the capital stock, but I didn't go into the particulars of the formation of the company at all. That may seem strange. But in the enormous transactions we have down here we simply have faith that the man who is doing the thing is doing it properly, or else we don't negotiate or trade with him.

Q. *Did you finally consent to surrender your holdings on the basis on which you did, because you had made up your mind they would carry out the determination you had heard expressed, to retire the preferred stock, and thus take away from you the controlling interest in the stock of the Northern Pacific?*

A. *I think I recollect pretty clearly, that from our standpoint we thought it was better for us to accept that price for our stock than go into legal contest.*

Q. *And you understood that if you did not do that you would have a legal contest on that question?*

A. *Well, we took it for granted, naturally, action having been taken determining to retire the preferred stock.*

Q. *Well, action was not taken to retire the preferred stock until your negotiations had nearly reached a conclusion?*

A. *Yes, but they had not reached a conclusion.*

Q. *That is, you waited until the very last moment to see if they would do what you understood they would do?*

A. *Well, we were very patient.*

Q. Then, if such action had not been taken, you would not have surrendered your stock?

A. I don't know. That is a condition we did not have to meet. I don't think I could answer that question fairly, nor do I think it is exactly a fair question, because the board of directors might have determined (if they had not done it) to have sold our shares for less.

Fols. 3591-3598.

Q. And they never disclosed to you for whom they were acting until the transaction was ready to be closed?

A. *My recollection is they did not. In fact, I don't think this transaction was closed until practically the very minute the payment was made. I think there was considerable discussion and dispute as to the final payment, and about—I don't remember now whether it was the amount to be paid, or whether it was the amount of stock to be delivered; I think it was the amount of stock to be delivered. They supposed we had somewhat more stock than we really had.*

Fols. 3602, 3603.

MR. CLOUGH:

Q. The records show that you were present at a meeting of the directors of the Northern Securities Company on the 15th of November, 1901, where the statement was made by the president of the Northern Securities Company as to his ability or the possibility of acquiring $37,023,000 of the common stock of the Northern Pacific, and $41,085,000 of the preferred stock. You were present at that meeting?

A. I was; yes, sir.

Q. Was there any discussion at that meeting as to the advisability of this purchase and the terms upon which it was to be made?

A. There was no extended discussion.

Q. Well, will you state what discussion took place?

A. If you will be kind enough to let me take those minutes, I will explain just what did occur [referring to pamphlet containing minutes of the meeting]. This meeting was an adjourned meeting, held at half-past two o'clock on the afternoon of the 15th, which, as I remember, was Friday. A little before the hour for the meeting had arrived—perhaps half an hour or so—one of the partners of J. P. Morgan & Company—my recollection is that it was Mr. Steele—came to the Northern Securities office and said that a negotiation which was pending at that time between J. P. Morgan & Company and Messrs. Harriman and Pierce, for the purchase of their holdings in Northern Pacific preferred and common, he thought would very shortly come to a conclusion as to terms; that is, the precise terms upon which Harriman and Pierce would sell would be arrived at very shortly. And he said, at the same time, that probably before closing the contract, if one were entered into, Harriman and Pierce might, if the stock were turned over to the Northern

Securities Company, desire to see some action of the board, and suggested that some kind of action should be taken, and inquired about the meeting. I told him that there was to be a meeting that afternoon, but that likely there could not be another meeting on Saturday (which would be the following day) on account of the fact that a number of our directors did not come to their business on Saturday, and that a meeting could not be had until the fore part of the week after that day. Then it was suggested that as that was the case, and this bargain might come to an early termination, and it might be desired to close it up soon, some sort of action be taken at the meeting to be held that afternoon. And then a sketch was made of a minute entry for the meeting, beginning with the words "The president stated", and ending with the resolution which closes the first paragraph of the 18th page of this printed volume of the minutes. But as the bargain had not yet been concluded, the figures showing either the amount of the stock, or the price to be paid, could not then be stated, but he thought they would be ascertained before the close of the meeting. So this preamble, commencing with the words, "The president stated," and the resolutions following were prepared just as they are now, with the sums left blank, and the meeting assembled, and, after waiting a little while, no figures were present, and some of the directors being anxious to get away, I produced this preamble and resolution, and I read the resolution and explained it in a general way to the meeting. After quite a general expression of opinion among the directors who were present, that a purchase of this stock was very desirable, the resolutions with the blanks and the preamble were adopted. Then we passed to other business. Just as the meeting was breaking up (the other business being finished) I think Mr. Perkins came in (who was a director). I think Mr. Perkins appeared for the first time near the close of this meeting, after most of the business had been done, and brought in figures showing the amount of preferred and common stock, respectively, that Harriman and Pierce had, and the price to be paid; showing the money and the amount of stock of the Northern Securities Company that was to be paid for it. I looked at it, and it was shown to Mr. Hill, and then it was perceived that the amount of Northern Pacific stock contained in that statement was appreciably less than the amount

of stock which we had all the time supposed they owned. *And we declined to close the trade; that is, the Securities Company declined to take the stock from Morgan & Company on that basis. The meeting then adjourned, with the whole matter left open. And, as I understood, negotiations were then resumed between Morgan & Company and Harriman and Pierce, and were concluded sometime between Friday afternoon and the following Monday morning (which was the 18th). Then a basis was reached, which is expressed by the figures which now appear in this resolution. The preferred and common stock of the Northern Pacific were brought in and paid for, and the minutes were written up with these numbers inserted as they now appear here. The meeting for the purpose of acting upon this project again had been adjourned until the following Tuesday. It was found that the following Tuesday was the first day we could reasonably expect to get a quorum. So the following Tuesday the minutes of the meeting of the previous Friday with the blanks filled as they now stand, were read and approved by the board of directors. That is the history of the resolution.*

Fols. 3621 to 3629.

Purchase of Great Northern Shares.

Thirty millions of Great Northern stock were purchased from the eight shareholders instrumental in organizing the company. Sixty-five millions, making up the ninety-five millions acquired, were purchased from time to time from twelve hundred other Great Northern shareholders who were not concerned in the organization of the Northern Securities Company, and who did not have knowledge of its organization until it had commenced doing business. Not one share of the sixty-five millions purchased from those twelve hundred shareholders was purchased through the advice, procurement or persuasion of any-one of the shareholders concerned in the organization of the company.

On November 22, 1901, the Northern Securities Company issued and mailed to each registered shareholder of the Great Northern Company a circular, of which a copy appears below.

There is not the slightest evidence that any Great Northern shareholder, other than the eight or ten who consulted about the formation of the Securities Company, had ever heard of the existence of that company, or that any such company was contemplated, prior to his receipt of this circular.

"No. 27–29 Pine Street, New York City,
November 22, 1901.

To Holders of Stock of the Great Northern Railway Company:

The Northern Securities Company, incorporated under the laws of the state of New Jersey with an authorized capital stock of $400,000,000, and with power to invest in and hold the securities of other companies, has commenced business, and has acquired from several large holders of stock of the Great Northern Railway Company a considerable amount of that stock.

A uniform price has been paid of $180.00 per share in the fully-paid stock of this company at par. This company is ready to purchase additional shares of the same stock, at the same price, payable in the same manner, and will accept offers made on that basis, if made within the next sixty days.

Offers for sale of stock of the Great Northern Railway Company should be made upon the enclosed form, and should be accompanied by the certificates of the stock offered with transfers duly executed, having United States stamps for transfer tax of two cents per share affixed.

Upon receipt of any such offer, so accompanied, the Northern Securities Company will deliver to the seller of the stock of the Great Northern Railway Company, certificates of its own stock to the amount of the purchase price above named, or if such certificates are not then ready for delivery, its negotiable receipt obliging it to issue and deliver such certificates as soon as

ready. For fractional parts of shares scrip certificates convertible into stock in multiples of $100 will be given.

(Sgd.) NORTHERN SECURITIES COMPANY,
By JAMES J. HILL,
President."

Fols. 2782–2786.

MR. HILL:

Q. After sending that circular, state whether or not you received inquiries from shareholders in reference to what conduct they should take, what they should do with their shares.

A. There were a great many letters. I was in New York at the time, and a great many letters came addressed to the office, some of them addressed to me, wanting to know what I would advise them to do. Some would write to the office and wanted to know what Mr. Hill wanted them to do, or what the company wanted them to do.

Q. What action did you take in answer to those inquiries? How did you answer them?

A. Some individuals came in to see me. I told them it was their own affair. Others wrote, and there were so many letters that I prepared a letter that was in the nature of a circular letter, that would answer all their questions, and that was issued. I prepared it instead of writing a separate letter to each inquirer."

Fols. 2786–2788.

"NOVEMBER 30TH, 1901.

DEAR SIR: Replying to your letter of the 23rd instant, asking for further information about the Northern Securities Company, I beg to say that the business of that company is to deal in high-class securities, to hold the same for the benefit of its shareholders and to do such other acts as will advance the interests of the companies whose securities it holds.

The powers of the company do not include the operation of railways, banking, nor buying or selling for others on commission.

The organization of such a company has been considered for many years by the original promoters of

the St. Paul, Minneapolis & Manitoba Railway Company, and its successor, the Great Northern Railway Company, who have always remained the largest shareholders therein. These men have deemed it wise to make permanent arrangements for the protection of their interests and for securing a continuous policy in the management of their properties. Believing the Northern Securities Company will secure the objects named, they have generally sold to it their holdings of Great Northern shares, on the terms stated in the circular.

The traffic of coal and other local companies is of great value to the railway, while the conduct of the business of such companies is outside of the railway's corporate powers. The Securities Company will control this large traffic for the railway and will receive the profits of these separate properties.

The offer contained in the circular came from the request of the large holders of Great Northern, above mentioned, who desired that all other holders might have the same opportunities as themselves in association with them, and upon the same terms. The writer is of opinion that the offer of the Securities Company is one that Great Northern shareholders can accept with profit and advantage to themselves.

Yours truly,

(Sgd) JAS. J. HILL.

Fols. 2791–2793.

MR. HILL:

Q. About how many individual shareholders of the Great Northern have transferred their shares to the Northern Securities Company?

A. Well, I can hardly say, but I should think possibly a thousand or twelve hundred.

Fol. 2780.

Sales made by the Great Northern shareholders were absolute, separate, and individual, without concert of action or solicitation from those instrumental in organizing

the Northern Securities Company. Instead of soliciting sales, Northern Securities Company gave notice of threatened litigation, verbally, and by causing it to be stamped upon written applications for exchange of shares, and thus left it to the decision of each shareholder.

MR. HILL:

Q. *State whether or not your sale or transfer to the Northern Securities Company was an absolute, out-and-out sale and transfer, or whether there was any understanding or condition or trust or anything of that kind connected with it.*

A. *The sale by myself, and by everybody—and as president of the Northern Securities Company I know the conditions upon which the purchases were made—they were absolute purchases, as absolute as was possible to make them, and outside of any condition, or trust, or implied agreement, or anything else. They were just as free to sell the stock—that is, the Northern Securities Company is the absolute owner of the stock and free to sell it and dispose of it, or burn it if it sees fit.*

Fol. 2774.

Q. Was there any understanding as to how the Northern Securities should vote that stock?

A. None whatever. It is a matter for its own considerstion. Not any more than if you bought it, or any other purchaser. There was no condition of any kind attached to the sale of the stock. They bought it outright and paid for it, and there is no agreement, direct or implied, in existence, or ever was in existence or ever contemplated.

Fol. 2775.

Q. *Now, was there any solicitation with the shareholders of the Great Northern, either on the part of the officers of the Great Northern or of the officers of the Northern Securities Company—any solicitation to them*

to turn in, to transfer, their shares to the Northern Securities Company?

A. *No, sir; there was absolutely none. On the contrary, great pains were taken to see that every shareholder understood that it was a matter for himself to decide, and one that nobody else could decide for him. The price was such, bring below the market, that it was thought it would deter a number from selling their stock. In fact I did not expect that so large a number of the shareholders would exchange their stock. We gave them the opportunity if they desired to.*

Fol. 2779.

Q. Now, what was the response to the offer? How much stock of the Great Northern was exchanged for stock of the Northern Securities?

A. Oh, I don't recall the amount. I know a great deal came in before—I should say nearly half of it came in very soon after—maybe 40 per cent. Then a lawsuit was started, I think, by the state of Minnesota first, or Peter Power; I am not sure which; but a lawsuit was started, and we took pains then—a great many had sent their stock to the office—we took pains to notify them that a lawsuit had been commenced, and the stock was not purchased, the transaction was not closed until they were notified and asked: "Do you still want to sell your stock?" We felt it was a duty to let them know that such a lawsuit had been commenced, as that might make some difference in their view as to whether they wanted to sell their stock to the Securities Company or to hold it as Great Northern.

Fols. 2810–2811.

MR. CLOUGH:

Q. Had you any knowledge of the fact of transfers of the Great Northern and Northern Pacific to the Northern Securities Company.

A. Yes, sir; I knew about that; it was all done under my supervision.

Fol. 3124.

Q. *State whether the transfers were individual, absolute, and without solicitation from the Northern Securities Company?*

A. To answer the first question, every purchase of stock that has been made by the Northern Securities Company, (whatever stock it may be,) has been by direct individual transactions and negotiations with the owner of that stock, except in the one instance that I have referred to in my previous testimony, of the purchase of the Harriman and Pierce stock, where J. P. Morgan & Co. negotiated the purchase and the purchase was assigned to the Northern Securities Company.

Q. Now, were the transfers absolute?

A. They were absolute and unconditional in every case.

Q. Were they solicited by the Northern Securities Company?

A. No, sir; in no case. The Northern Securities Company, sometime in November, I have forgotten the precise date, I think it was the 22nd, issued a circular to each individual stockholder of the Great Northern Railway Company, of which a copy has been introduced.

Q. Were you present in the office of the Northern Securities Company at the times when holders of shares came there to make transfers or to make inquiries?

A. Yes, sir; I was there constantly in attendance, at all times during practically every business day.

Q. Now, were a considerable number of transfers made there by parties appearing personally or by their representatives?

A. Yes, sir, quite a good many people brought their stock in personally; many others sent it by mail.

Q. What information or suggestions were made to them respecting the transfers?

A. Why, there was nothing special; the transaction would be, that the individual would present his Great Northern stock, or Northern Pacific stock, as it might be, ank asked to sell it to the Company and to receive in pay the stock of the Company. When litigation against the Company was threatened, I think in every instance, that fact was communicated to every person bringing his Great Northern and Northern Pacific stock to the Securities Company to sell it. And after a little time, after litigation had been begun by the state of Minnesota, in the Supreme Court of the United States, (that was, if I remember right, early in the present year, about the first of January, 1902), the Company had a rubber stamp made, of which I haven't a copy of the impression here (I forgot to bring it), but it was to the effect, that the person who offered his stock to the Securities Company for sale had been in-

formed by the officers of the Company of the pendency of the litigation, and that was stamped upon each application. In order to keep our records straight, we had a blank form of offers to the Company, and that was stamped upon the application.

Fols. 3126, 3130.

No inflation of securities was planned or effected. The stock of the Chicago, Burlington and Quincy Railroad Company and of each of the defendant railway companies was worth in cash at least the price paid.

MR. HILL:

Q. *Now, how was the price of the Burlington Railroad Company stock fixed?*

A. *The matter was the subject of negotiation on several occasions. The books or transcripts of the accounts were produced, showing its earnings—the income—I remember its income as shown was $10,400,000, including the sinking fund, and that was over 10 per cent. on the outstanding stock at that time, or about 10 per cent. The Burlington road had a very heavy sinking fund; for many years the miles of main track—something over 8,000—had a bonded debt, less the sinking fund, of about $15,800 a mile, and stock was about $13,000 a mile. Take the Burlington stock at 200, and add to it the bonded debt per mile of the road, and it would give the average cost of the Burlington about $42,000 a mile, which was about what it cost us; that is $10,000 or $12,000 a mile less than any of these granger roads are selling at on the market. In other words, the Burlington was the cheapest property altogether, and reached the points we desired to reach, and it would cost us less money per mile than it would to have acquired any other.*

Fols. 587, 588, p. 148.

The Norther Securities Company paid for about half of the Northern Pacific common stock at $115 per share in its own stock. About thirty-four millions were obtained directly from the railway company

through the convertible bonds, which cost the Securities Company par, for cash. The cost of the thirty-seven millions bought from the Oregon Short Line (the Union Pacific interest) can only be estimated in a general way. Its net cost to the Securities Company, part cash, and part Securities Company's stock, could not have much exceeded $132 per share, including the right to acquire the shares of new stock at par.

The average cost to the Securities Company, therefore, of all its acquisitions of Northern Pacific common was not far from $115 per share.

The Northern Pacific Company owns about 5,750 miles of railway, of which it operates about 5,350 miles, directly and through controlled companies. Its fixed charges are about $6,600,000 per year. Its total capital stock outstanding is $155,000,000, all of uniform class and rights.

For the fiscal year ending June 30, 1901, its net revenues above operating expenses and taxes were $15,744,274. Deducting interest and rentals left a balance of $9,213,903 applicable to dividends, if the company should elect to so use it all. This was six per cent. upon its stock.

In the year ending June 30, 1902, its net revenues above operating expenses and taxes were $19,792,840. Deducting interest and rentals, left a balance of $13,047,233 applicable to dividends, if the company should elect to so use it all. This was about eight and a half per cent. upon its stock.

The increase of revenues of this property in 1902, over 1901, did not come from increased rates of transportation. It came solely from increase in volume of traffic.

In the year 1901 the number of tons one mile was 2,440,662,665. In the year 1902 the number of tons one mile was 3,300,253,137, making an increase in one year of 859,590,472 tons one mile. In the year 1901 the average earnings per ton per mile were $9\frac{44}{100}$ mills. In the year 1902 the average earnings per ton per mile were 9 mills (Rec., pp. 998–1009).

The Great Northern Railway System comprises about 5,850 miles of road, covered by the stock of the Great Northern Company.

The fixed charges of the company on securities in the hands of the public amount to about $4,860,000 per year. Its total capital stock now outstanding is about $123,850,000, all of uniform class and rights. For the year ending June 30, 1901, its net revenues above operating expenses were $13,887,679. Deducting interest and rentals left a residue of $8,833,021 applicable to dividends, if the company should elect to so use it all. This was eight and eight-tenths per cent. on its outstanding capital stock ($98,000,000) in that year.

For the year ending June 30, 1901, its net revenues above operating expenses were $20,015,946. Deducting interest and rentals left a residue of $15,180,732 applicable to dividends, if the company should elect to so use it all. This was 12 per cent. on its outstanding capital stock ($123,850,000) in that year.

As in case of Northern Pacific, the increase of the revenues of this property in 1902 over 1901 did not come from increased rates.

In the year 1901 the numbers of tons carried one mile was 2,481,751,195.

In the year 1902 the corresponding figures were 3,190,217,482.

In the year 1901 the average earnings per ton per mile were $8\frac{71}{100}$ mills.

In 1902 they were $8\frac{59}{100}$ mills.

Rec., pp. 944–952.

The average earnings per ton per mile of these roads in both years are shown by the public and official statistics of railroad operations in the United States to have been considerably below those of any other line of road operating to the Pacific Coast.

Great Northern stock has been regularly bought and sold upon the market up to date; and the daily quotations of prices for it appear in the public statistics. The figures for these prices through the year 1901, and for the bulk of the year 1902, have been put in evidence. At practically all times from the beginning of the year 1901 down the market price has been several dollars per share above $180 (Rec., p. 986).

There was no connection between the retirement of the Northern Pacific preferred stock and the formation of the Securities Company. The purpose of retiring the preferred stock on January 1st, 1902, had been formed before the dissolution of the voting trust, on January 1, 1901, and that dissolution was the first step toward carrying out such purpose.

The first meeting of the first Board of Directors of the Northern Pacific Railway Company, elected by the direct vote of its stockholders, was held on November 13,

1901, a regular meeting day of the board, under its rules.

The holding of the meeting at any earlier date had been prevented by absence from town of directors necessary for a quorum.

The preferred stock was issued for temporary purposes only. Prior to the beginning of the year 1901 Mr. Morgan and his co-trustees in the voting trust had decided that the subject of retirement should be acted upon by the first board of directors elected by the stockholders. The first election of the board by direct vote of the stockholders occurred in October, 1901. There was no meeting of the board of directors so elected by the stockholders, by reason of the absence from town of directors, until November 13th, at which time the board was organized, officers elected, and a resolution adopted to retire the preferred stock. By the terms of the agreement under which stock was issued, it could be retired only on a first day of January. To accomplish the retirement, the company would have to raise $75,000,000, the amonnt of the preferred stock, and give notice of its action and intention to the parties concerned. As the first meeting of the newly-elected directors, on November 13th, came so late as to leave but a short interval for doing the necessary things connected with the retirement the requisite action of the board was taken at that meeting. The reasons why the filing of the certificate of incorporation was delayed until the 13th of November, the same date when the Northern Pacific board of directors met, was inability to complete the articles earlier, because of the absence of gentlemen it was considered desirable to consult.

MR. KENNEDY:

Q. Why was the directors' meeting which passed the resolution for the retirement of the preferred stock held on the 13th of November, 1901?

A. That is the regular meeting day. I think the by-laws provide that the board shall meet on the second Wednesday of every month, and I think that was the regular meeting day.

Q. Was that the first meeting after the election?

A. Yes; I believe that was the first meeting after the election. There was no meeting held in October, because it was found they could not get a quorum, so that was passed over, and the first meeting after the election was held the second Wednesday in November. I don't remember the date, but I think it was the 13th.

Fols. 865, 866.

MR. STEELE:

Q. When was the plan of transferring to the Northern Securities Company, the stock in the Northern Pacific, first brought to your attention?

A. May I ask what stock in the Northern Pacific you mean?

Q. All the stock that could be obtained.

A. I never heard any such plan as that at all.

Q. Will you modify that question by saying any stock of the Northern Pacific, then?

A. That was brought to my attention about midsummer of 1901. It came about shortly after Mr. Morgan's return from Europe, which was early in July. The question of transferring that stock to the Northern Securities Company I am not sure was discussed at that time. The question of forming some sort of a holding company to hold the Northern Pacific stock which we had bought, and which was held by our friends, at that time was discussed, about then.

Q. Did your firm have anything to do with the organization of the Northern Securities Company?

A. No, sir.

Q. That was a deal entirely outside?

A. Outside; yes.

Q. Wasn't the matter of the retirement of the preferred stock discussed, and the plan under advisement at the same time as the plan for organizing a securities company to turn over the N. P. stock?

A. No, sir. The matter of retiring the preferred stock was never under discussion. It was considered a settled thing, as far as we were concerned, and the question of the particular plan I don't think came up until shortly before the directors' meeting at which it was to be acted on.

Fols. 1152 to 1155.

MR. MORGAN:

Q. You returned from California the very end of October, did you not?

A. Yes.

Q. The plan for the retirement of the preferred stock was adopted by the board of directors on the 13th of November?

A. Yes.

Q. Now, so far as your knowledge or participation in the completion of that plan, it was between those dates, was it not? Between your return from California and the 13th of November?

A. Of course; it could not have been otherwise.

Q. I mean it was not taken up before you went to California?

A. Oh, no; I think we finished it up the day we issued it.

Fols. 1455, 1456.

Q. Did or did not the organization of the Northern Securities Company have any relation to the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was there, or was there not, in any way, any connection between the organization of the Northern Securities Company and the retirement of the preferred stock of the Northern Pacific?

A. Nothing whatever.

Q. Was the retirement of the preferred stock of the Northern Pacific Company undertaken for the purpose of giving to the Northern Securities Company an opportunity to acquire a majority of the common stock of the Northern Pacific Company, and thereby control that company?

A. Nothing whatever, because they already had it.

Q. Was there any scheme or plan entered into by anyone, so far as you know, whereby the retirement of the Northern Pacific preferred stock was to be used to

vest in the Northern Securities Company, or in anyone else, the control of the Northern Pacific?

A. Certainly not.

Q. Was it agreed by any one, so far as you know, before the Northern Securities Company was organized, that the so-called Harriman or Union Pacific stocks in the Northern Pacific should be placed in the Northern Securities Company?

A. No; we did not require it.

Q. And you did not know that it would be done until after the consummation?

A. Not until after.

Fols. 1439 to 1444.

Fifth Finding.

"THE SCHEME WHICH WAS THUS DEVISED AND CONSUMMATED LED INEVITABLY TO THE FOLLOWING RESULTS: FIRST, IT PLACED THE CONTROL OF THE TWO ROADS IN THE HANDS OF A SINGLE PERSON—TO WIT: THE NORTHERN SECURITIES COMPANY BY VIRTUE OF THE OWNERSHIP OF A LARGE MAJORITY OF THE STOCK OF BOTH COMPANIES; SECOND, IT DESTROYED EVERY MOTIVE FOR COMPETITION BETWEEN TWO ROADS ENGAGED IN INTERSTATE TRAFFIC WHICH WERE NATURAL COMPETITORS FOR BUSINESS BY POOLING THE EARNINGS OF THE TWO ROADS FOR THE COMMON BENEFIT OF THE STOCKHOLDERS OF BOTH COMPANIES, AND, ACCORDING TO THE FAMILIAR RULE, THAT EVERY ONE IS PRESUMED TO INTEND WHAT IS THE NECESSARY CONSEQUENCE OF HIS OWN ACTS WHEN DONE WILFULLY AND DELIBERATELY, WE MUST CONCLUDE THAT THOSE WHO CONCEIVED AND EXECUTED THE PLAN AFORESAID INTENDED, AMONG OTHER THINGS, TO ACCOMPLISH THESE OBJECTS." (Rec., p. 1705.)

"(IN CASES ARISING) UNDER THE 'ANTI-TRUST ACT WHEN THE POINT INVOLVED IS WHETHER THE OWNERSHIP OF ALL THE STOCK OF TWO COMPETING PARALLEL RAILROADS VESTS THE OWNER THEREOF WITH POWER TO SUPPRESS COMPETITION BETWEEN SUCH ROADS WE ENTERTAIN NO DOUBT THAT IT DOES. INDEED, WE

REGARD SUPPRESSION OF COMPETITION, AND, TO THAT END, A RESTRAINT OF COMMERCE AS THE NATURAL AND INEVITABLE RESULT OF SUCH OWNERSHIP." (Rec., p. 1707.)

Here we have reference to a plan or scheme which had not been formed, and also a new definition of "pooling." Assuming the existence of such a "scheme," it was, under the decision of the Court, unlawful solely because it led to the placing of a majority of the stock of the two roads in the hands of a single owner, thereby destroying the motive for competition between them. Under the decision, it is the possession of the power by a single owner to vote a majority of the shares of competing corporations engaged in interstate trade, that necessarily, directly and immediately regulates the commerce of such corporations. Let us refer again to the language of the Court: "Indeed we regard suppression of competition, and to that end a restraint of commerce, as the natural and inevitable result of such ownership." It is then the possession of the power that restrains trade, and not the method of its acquisition. The ruling of the Court is, that the obtaining of the power by a single interest, no matter how acquired, necessarily restrains trade. Congress, in the exercise of Federal control over the matter, has not as yet forbidden the obtaining of the power by gift, inheritance, or purchase in the market in the usual course of business, but has, as the Court holds, by the "Anti-Trust Act," forbidden its acquisition through contract or combination in the form of trust or otherwise. The question then is whether unity of ownership of a majority of shares of competing corporations en-

gaged in interstate commerce is a direct regulation of their commerce. If the voting power incident to such ownership is not a direct restraint of the commerce of the corporations, no plan or combination to acquire the power can be unlawful. The Anti-Trust Act does not forbid the obtaining of the power if the power does not directly, necessarily and inevitably restrain the commerce of the corporations. The method of acquiring the power is unimportant if possession of the power is not unlawful. If we are to look at the motive which led to the obtaining of the power, it is because of the bearing which such motive has, or may have, upon the question of how the possessor of the power intends to exercise it. In this view it is not the obtaining of the power, but its unlawful exercise, that is forbidden. It comes to this: The "Anti-Trust Act" does not forbid the acquisition of the power by a single owner, through gift, inheritance or purchase in the usual course of business. In such case, in the view of the Court, the power to restrain trade and the destruction of the motive for competition, destroys competition. If two or more owners of a majority of the stock of competing corporations engaged in interstate trade sell their shares to a single owner, individual or corporate, through an understanding or agreement between themselves to make the sale, the power acquired through the purchase restrains the commerce of the corporation, and the transaction is forbidden by the Anti-Trust Act. If the ownership by a single interest of the capital stock of competing corporations engaged in interstate trade, directly and inevitably restrains the commerce of such corporations, such ownership is a matter of exclusive Federal control. If common ownership of a majority of shares of such cor-

poration is a direct regulation of their commerce, it would seem to follow that the ownership by a single interest of a majority of the shares of a single railway company is also a direct regulation of the commerce of such company. "If the ownership of a majority of shares of one company does not regulate the commerce of that company, how can the ownership of a majority of shares of two companies be held to be a regulation of the commerce of both? If the ownership of a majority of shares of two non-competing corporations does not directly regulate the commerce of such corporations, how can it be said that the ownership of the shares of competing corporations regulates their commerce? The intent with which the power was obtained is immaterial, if the power, when obtained, directly restrains trade. The single owner, who has obtained the power cannot be heard to say that there was no intent to obtain it. If the obtaining of the power is not unlawful as a direct restraint of trade, and the question is one of the exercise of the power, intent may become material in a suit brought to restrain the exercise of the power, provided that in the exercise of the power, trade may be directly restrained. It is not claimed or pretended that the Northern Securities Company has entered into any contract or combination in restraint of trade.

Sixth Finding.

"IT MAY BE THAT SUCH A VIRTUAL CONSOLIDATION OF PARALLEL AND COMPETING LINES OF RAILROAD AS HAS BEEN EFFECTED, TAKING A BROAD VIEW OF THE SITUATION, IS BENEFICIAL TO THE PUBLIC RATHER THAN HARMFUL. IT MAY BE THAT THE MOTIVE WHICH INSPIRED THE COMBINATION BY WHICH THIS END WAS ACCOMPLISHED WERE WHOLLY LAUDABLE AND UNSELFISH; THAT THE COMBINATION WAS FORMED BY THE INDIVIDUAL DEFENDANTS TO PROTECT GREAT INTERESTS WHICH HAD BEEN COMMITTED TO THEIR CHARGE; OR IT MAY BE THAT THE COMBINATION WAS THE INITIAL AND NECESSARY STEP IN THE ACCOMPLISHMENT OF GREAT DESIGNS, WHICH, IF CARRIED OUT AS THEY WERE CONCEIVED, WOULD PROVE TO BE OF INESTIMABLE VALUE TO THE COMMUNITIES WHICH THESE ROADS SERVE AND TO THE COUNTRY AT LARGE.

* * * * * *

IT IS OUR DUTY TO ASCERTAIN WHETHER THE PROOF DISCLOSES A COMBINATION IN DIRECT RESTRAINT OF INTERSTATE COMMERCE; THAT IS TO SAY, A COMBINATION WHEREBY THE POWER HAS BEEN ACQUIRED TO SUPPRESS COMPETITION BETWEEN TWO OR MORE COMPETING AND PARALLEL LINES OF RAILWAY ENGAGED IN INTERSTATE COMMERCE. IF IT DOES DISCLOSE SUCH A COMBINATION, AND WE HAVE LITTLE HESITATION IN ANSWERING THIS QUESTION IN THE AFFIRMATIVE, THEN THE 'ANTI-TRUST ACT' AS IT HAS BEEN HERETOFORE INTERPRETED BY THE COURT OF LAST RESORT, HAS BEEN VIOLATED" (p. 1713).

The above finding necessarily rests upon the inference, that the suppression of competition between the two ~~roads~~ RAILWAY companies will be advantageous to the Securities Co. as owner of their stocks.

The contrary is the fact.

The Court finds that the Northern Securities Company can and may exercise its voting power in a manner beneficial to the public, rather than harmful. It can and may exercise its power in such a way as not to restrain trade to the injury of the patrons of the defendant railway companies and the public, but in such a way as to prove of inestimable value to the communities which the railway companies serve, and to the country at large. The competitive interstate traffic of the defendant railway companies is insignificant, in comparison with their total interstate traffic. Such competitive traffic does not amount to over $600,000 per year out of $18,000,000 of interstate earnings. The interest of the stockholders of both companies lies in the direction of building up traffic, and thereby increasing net earnings. This can only be done by making rates and carrying out a policy that will lead to the settlement of the territory served by them, and develop trade, agriculture, lumbering, manufacturing and mining. The two companies, in order to increase their volume of traffic and reduce rates, purchased the Burlington stock, and through such purchase they have been able to obtain a more direct and permanent access to the best markets for the products of the territory along their lines, and to secure connections which furnish the largest amount of traffic for their respective roads. These connections, and such interchange of traffic, are indispensable to the growth of their business, local as well as interstate, to the development of the country served by them, and to enable them to meet competition with other lines of railway and with European carriers, for interstate and international trade. By such connections and interchange of traffic the defendant railway companies have been

able to reduce rates, provide better facilities, and increase their volume of traffic. Through such connections a permanent basis for the development of their traffic has been secured, which justifies the investment of large amounts of capital in building docks, constructing ships, and providing improved facilities. It must be assumed that the power of the Northern Securities Company as a stockholder will be exercised in such a way as to build up traffic and not to destroy it. Its power to build up traffic is greater than its power to destroy it. Its power to maintain a policy that will enable the defendant railway companies to render good service at low rates, and thus meet the competition of the world, is greater than its power to discourage or prevent the settlement and development of the country through which the lines run, and thus make impossible that growth and extension of traffic upon which their future prosperity absolutely depends. Still it was held by the Court that there is a conclusive presumption that the interest of any single owner of the shares of competing corporations will be such, at all times, and under all circumstances, as necessarily to lead such owner to exercise the voting power of the shares in such way as to influence or coerce directors to restrain trade and destroy competition. It is impossible to understand how the Court reached such a conclusion.

It declined to look at the transactions as a whole, or, to consider the growth and development of trade, intended in fact and sure to follow.

The undisputed evidence shows that since the Northern Securities Company became the owner of the shares

of the defendant railway companies, the traffic of both companies has largely increased and rates have been reduced.

In the year ending June 30, 1902, the number of tons hauled one mile by Northern Pacific exceeded by 859,590,472 those hauled in the year ending June 30, 1901.

In the year ending June 30, 1903, the number of tons hauled one mile by Northern Pacific exceeded by 515,689,806 those hauled in the year ending June 30, 1902.

In the year ending June 30, 1902, the number of tons hauled one mile by Great Northern exceeded by 708,466,287 those hauled in the year ending June 30, 1901. In the year ending June 30, 1903, the number of tons hauled one mile by Great Northern exceeded by 416,617,694 those hauled in the year ending June 30 1902.

In the year ending June 30, 1902, the number of tons hauled one mile by Burlington exceeded by 742,543,188 those hauled in the year ending June 30, 1901. In the year ending June 30, 1903, the number of tons hauled one mile by Burlington exceeded by 929,553,769 those hauled in the year ending June 30, 1902.

Rec., pp. 998, 1009, 944, 952.

In the year ending June 30, 1901, Northern Pacific hauled 1,215,834 tons of lumber; in the year ending June 30, 1902, 1,640,475 tons; in the year ending June 30, 1903, 2,013,510 tons. In the year ending June 30, 1901, Northern Pacific hauled of forest products other than lumber, 1,525,874 tons; in the year ending June 30, 1902, 2,054,219 tons; in the year ending June 30,

1903, 3,076,877 tons. The greater part of this increased movement was to Burlington territory, and but for the purchase of Burlington stock could not have been made. The lumber making up the increase would not and could not have been produced.

Foreign commerce of the Great Northern Railway Company increased over 100 per cent. the first year after the Burlington purchase. One effect of this increase was to enable the company to reduce its rates from 10 per cent. to 15 per cent. on local business in all the territory between St. Paul, Lake Superior and the Pacific coast.

Fols. 2711, 2713.

Shipments of cotton piece goods to the Orient by the Great Northern in 1901 were 13,071 bales; in 1902, 64,542 bales; raw cotton in 1901, 13,230,000 pounds; 1902, 41,243,000 pounds.

Fol. 2707.

Exports of raw cotton to Japan, that, in the year ending June 30, 1901, amounted to 35,879,665 pounds, in the year ending June 30, 1902, were 89,252,696 pounds, and in the year ending June 30, 1903, were 76,413,291 pounds. Practically all this increase came from the efforts of the Northern Pacific, Great Northern and Burlington lines to stimulate the traffic, through low transportation rates, and improved facilities for shipment.

The undisputed evidence of every witness who testified on the subject shows, that commerce of the defendant railway companies has increased, and will increase, through the Burlington purchase, and through making permanent the holding of the stock of the defendant rail-

way companies where it is not likely to pass into the hands of an interest adverse to the building up of the traffic of both companies.

All the evidence on this subject was disregarded. The facts were ignored, because, in the judgment of the Court, there is a conclusive legal presumption that the interest of any single owner of a majority of shares of competing corporations will necessarily lead to the exercise of the stock control so as to influence directors to suppress competition, and thus necessarily regulate commerce in violation of law.

Nothing in connection with the formation of the Northern Securities Company distinguishes its purchase of Northern Pacific and Great Northern stock from purchases made in the usual course of business, by individuals, or by financial concerns of the country in general.

The law deals with acts alone. This case is one of buying by the Northern Securities Company of the shares of competing railway companies. The self interest of the Northern Securities Company, as respects its ownership of such shares, is not different from the self-interest of any single owner of such shares, no matter how acquired. If the interest of a single owner of a majority of shares of competing corporations is to be considered, for the purpose of determining the intent with which the shares were acquired, the question is one of fact, to be determined in each case in the light of the evidence. So far as presumptions are to be considered, it will be presumed that a single owner of stock

will favor the adoption and carrying out of the policy that will make the stock most valuable, and insure the payment of dividends upon it. There is no conclusive legal presumption that the interests of a single owner of shares of competing corporation will be subserved by violating the law through suppressing competition or making unreasonable rates. The Government does not claim that the defendant railway companies have made any agreement, or entered into any understanding, to change their former business methods, or to advance rates, or decrease facilities, or refrain in any way from giving their patrons good service. It is not claimed that the Northern Securities Company has in any way restrained competition.

The motives of those who consulted about the formation of the Northern Securities Company were undeniably to develop and increase trade, and not to restrain it.

Nevertheless, their motives in no way affect the rights of the Northern Securities Company, under its charter.

If we are to inquire into the motive of the Great Northern and Northern Pacific shareholders in selling their shares, the evidence makes it clear that only eight or ten out of 1,800 Great Northern shareholders, and 3,600 Northern Pacific shareholders, owning not to exceed one-fourth of the shares of either company, were consulted in regard to its organization, or had knowledge of it until after it begun to do business. The motive of the eight or ten shareholders cannot be regarded as the motive of the Securities Company. If the motives

of those who sold their stocks to the Securities Company are to be imputed to the latter as its motives, then the motives of the 1,300 holders of Great Northern and Northern Pacific stock, who sold to the Securities Company from time to time, separately and individually, are the ones that must be considered. *The motive of the shareholders who consulted about the organization of the company was not to restrain trade by suppressing competition, but to make permanent and secure the enterprise of the Burlington purchase, and thus make it possible for the defendant railway companies to meet competition in interstate and international trade by increasing their volume of traffic, and thus acquiring ability to reduce rates.*

There is no legal presumption that any owner of corporate shares will vote upon them to impair his own interests. There is no presumption or proof that the raising of rates, the decreasing of facilities or suppression of competition will promote the interest, or increase the profits, of the Northern Securities Company, as holder of the shares of the defendant railway companies. All the proofs in this case show that the interest of the Securities Company lies in precisely the opposite direction.

The Case Is This.

FIRST. It is not denied that the Northern Securities Company is a corporation lawfully organized under the laws of the State of New Jersey, with charter power to purchase and sell securities of all kinds, and to purchase, hold, vote and sell all the shares of stock of any single corporation or of non-competing corporations. Its right to purchase, hold,

vote and sell all the stock of the Great Northern Railway Company alone, or the Northern Pacific Railway Company alone, is not denied.

SECOND. The organization of the company was the result of a plan to form an investment or holding company, which had its inception years before its articles were filed, among not exceeding ten large holders of Great Northern stock, who had taken an active interest in the policy of the company and its administration, but who never had held in the aggregate to exceed one-fourth of its outstanding stock. It was thought that if a company were formed to which they might sell their individual holdings, their shares would be likely to be held together, so long as a majority of the holding company should wish, and that this would tend to give stability to the policy of the company, be of aid to it in its financial operations, and maintain the value of their investments.

THIRD. The Burlington purchase was made to enlarge trade, not restrain it; to increase competition, not to suppress it.

(a) At the time of the purchase it was not contemplated by either purchasing company or its shareholders that any alliance between the purchasing company or their shareholders was needed to preserve to each company its fair share of the advantages secured by the purchase. The purchasing companies had executed joint and several bonds to an amount exceeding $200,000,000.00 on account of the purchase, and the control of the direction of one of them by rival interests would defeat the great enterprise they had undertaken, of building up a large international and interstate traffic, and impose upon the other all the burdens of the joint obligations incurred, while taking from it

all, or a large part, of the benefits of the purchase. It was thought that the manifest interest of each company rendered any further guarantee or security needless.

(b) But pending, or just after the conclusion, of the negotiations for the purchase, Union Pacific interests did purchase Northern Pacific shares, both common and preferred, to the amount of about $78,000,000.00, being a clear majority of the capital stock of the company.

(c) The intent of such purchase was to defeat, and if successful it would have defeated, the carrying out of the purposes for which the Burlington shares had been bought by the Great Northern and Northern Pacific companies, and the enlargement of the interstate and international commerce of each of them, and would have subordinated the policy of each to an interest adverse to both and to the public served by their lines.

(d) To protect the interest of the shareholders of the Northern Pacific Company, J. P. Morgan & Company, on learning of the purchases by the Union Pacific interests, made additional purchases of Northern Pacific common stock, which with the holdings in said stock of Mr. Hill and other Great Northern shareholders who had discussed with him the plan of forming a holding company, constituted about $42,000,000.00, being a majority of Northern Pacific common.

(e) The purchase by J. P. Morgan & Company of additional Northern Pacific common was made in the belief that the Northern Pacific Company had a right to retire its preferred stock on the first day of January, 1902, through an issue of new common, and with the expectation that the stock owned by J. P. Morgan & Company and Mr. Hill and the Great Northern shareholders referred to, would be held for the purpose of retaining stock control of the Northern Pacific Company, as a defensive measure, to protect themselves and other shareholders of the Great Northern and Northern Pacific Companies against the attack of the Union Pacific interests, or a like attempt by some other railroad company to defeat the purpose for which the Burlington shares were purchased.

FOURTH. At the time of the organization of the Northern Securities Company the Great Northern shareholders referred to owned about $30,000,000 of Great Northern stock, and $35,000,000 of Northern Pacific common stock, having increased their holdings of the latter by purchases from J. P. Morgan & Co. They did not control a majority of the shares of either of the defendant railway companies. In view of the injury apprehended to both companies, and their shareholders, and the better to protect their interests in the future, against raids of adverse interests, the Great Northern shareholders referred to deemed it advisable that the holding company which they had considered should be organized, should have power to purchase, not only their own Great Northern and Northern Pacific shares, but also the shares of such other Great Northern and Northern Pacific shareholders as might wish to sell their stock to it, and also the shares of companies already formed, and others that might be formed, for the purpose of aiding the traffic operations of the Great Northern and Northern Pacific companies.

FIFTH. At this time it was not expected by any of the persons concerned, that any Northern Pacific shares, except the $42,000,000 owned by them and by J. P. Morgan & Co. would be acquired by the proposed holding company. The organization of the company was not dependent on any agreement that it should acquire, nor upon the question of, a majority of the shares of either of the defendant railway companies. There was no agreement or understanding between the Great Northern shareholders referred to, that they or either of them would undertake to influence any one of

the other 1,800 Great Northern shareholders, or of the other 3,600 Northern Pacific shareholders, to sell their shares to the company.

SIXTH. The Great Northern shareholders referred to, upon the organization of the Northern Securities Company and the sale of their shares to it, parted with such stock control as they had in the Great Northern and Northern Pacific Companies. They do not own to exceed one-third of the outstanding capital stock of the Northern Securities Company. At the time of the trial the stock of the Northern Securities Company was held by 1,800 separate owners. The stock control of the Northern Securities Company is, therefore, not in the eight or ten Great Northern shareholders referred to, but in the 1,790 other shareholders of the Northern Securities Company, owning at least two-thirds of its outstanding shares.

SEVENTH. Nothing has been done except the purchase by the Northern Securities Company of a majority of the stock of the Great Northern and Northern Pacific companies.

(a) It purchased about $30,000,000 of Great Northern and about $35,000,000 of Northern Pacific common from the eight or ten Great Northern shareholders who consulted with each other concerning its organization.

(b) It bought about $7,000,000 of Northern Pacific common of J. P. Morgan & Co.

(c) It took by assignment from J. P. Morgan & Co. the purchase from Union Pacific interests, in one block, of $78,000,000 Northern Pacific stock, common and preferred, for which it paid, in cash, about $9,000,000, and the balance in its own stock. This purchase was made on the 18th day of November, and by it the Northern Securities Company acquired a majority of Northern Pacific stock.

(d) After it had acquired a majority of Northern Pacific stock, it bought $65,000,000 of Great Northern stock, from time to time, from about 1,200 Great Northern shareholders, the sales in each case being individual and separate, without solicitation of the Northern Securities Company, without concert between the sellers, and without request or influence of any of the shareholders concerned in its organization.

(e) It purchased other Northern Pacific shares from some of the 3,600 shareholders of the company, for which it paid in cash and in its own shares.

(f) It gave notice to Great Northern and Northern Pacific shareholders, when their shares were offered for sale from time to time, that litigation had been threatened or had been commenced, in which the right of the company to purchase their shares was brought in question; thus placing upon each holder of the shares the responsibility to determine whether or not to make the sale.

(g) It was expected that the company would acquire the $42,000,000 of Northern Pacific common, held by those concerned in its organization, and by J. P. Morgan & Co. There was no understanding, or agreement, or assurance, that it could or would acquire Northern Pacific shares in addition to such $42,000,000. Union Pacific interests were not concerned in the organization of the company, and had made no promise, nor given any assurance, respecting the sale of Northern Pacific shares to it. The purchase was made of Union Pacific interests after the Northern Securities Company was organized. A controlling motive of Union Pacific, in making the sale was to avoid litigation growing out of the declared purpose of the Northern Pacific Company to retire its preferred stock.

EIGHTH. The Northern Securities Company, as owner of the stock so purchased, may sell it or pledge it. It has made no agreement as to what it will do with it, or how it will vote it, or how it will dispose of the dividends received upon it. It is not a trustee of those from whom it received such shares, and owes them no

duty or obligation respecting the shares, since they have no further interest in them.

NINTH. It is not claimed or pretended that the defendant railway companies have entered into any contract or combination in restraint of trade, or that either of them has done anything to restrain trade or in violation of law. It is not claimed that the Northern Securities Company can restrain trade, except through the exercise of its right, as owner of the shares it purchased, to vote them at stockholders' meetings, in the election of a separate Board of Directors for each of the defendant railway companies; for the boards must be separate under the laws of the States of Minnesota and Wisconsin.

TENTH. This suit was not brought to prevent or restrain the execution of a contract, or the forming of a combination, in restraint of trade, but to restrain the Securities Company from voting the stock it owns at stockholders' meetings, and from receiving dividends thereon, thereby preventing payment of dividends upon its own shares issued in payment for the shares it purchased, upon the ground that mere possession of the voting power of the shares, is an unlawful restraint and regulation of the interstate commerce of the defendant railway companies.

ELEVENTH. The Government has no financial interest in this suit. The only way in which the Northern Securities Company could restrain the commerce of the two railway companies, is through the voting power of the shares it owns. If it had purchased the shares of only one of the companies, its right to vote such shares

would not be questioned. Trade could not, within the contention of the Government, or the ruling of the Court, be restrained by the Northern Securities Company, should its voting powers be limited to the shares of one of the companies. The decree enjoins it from voting the shares of either company and from receiving dividends from either. The effect of the decree is to deprive it of the means to pay dividends upon its own stock, whether issued in payment for the stock it purchased, or issued for cash. Thus the decree destroys the earning power of the stock of the Northern Securities Company, a large majority of which is now held by over eighteen hundred *bona fide* holders in the usual course of business not parties to the suit.

The Important Questions Are:

1. Does the Commerce Clause of the Constitution of the United States confer upon Congress jurisdiction to regulate the issue, sale and ownership of the capital stock of corporations organized under the laws of any one of the several States, or to inquire into the motives of incorporators, or of the buyers or sellers of their shares?

2. Has Congress, under the Commerce Clause of the Constitution of the United States, power to forbid or regulate the purchase or lease, by one railway company engaged in interstate commerce, of the railway of its competitor, or the purchase or lease by the owner of one ferryboat, stage coach or river steamboat, engaged in interstate trade, of the ferryboat, stage coach or river steamboat, of a competitor, on

the ground that through such purchase or lease competition may be restrained, and commerce regulated?

3. Is the unity of ownership through purchase, partnership, consolidation or lease, of a majority of the shares of competing corporations, engaged in interstate trade, a contract or combination in the form of trust or otherwise, forbidden by the "Anti-Trust Act", as in restraint of trade?

4. Is there anything in connection with the organization of the Northern Securities Company, or its purchases of stock, that in any way distinguishes its right to vote and receive dividends upon such stock from the right of any single interest, individual or corporate, to vote and receive dividends upon shares of competing corporations engaged in interstate trade, purchased in the ordinary course of business, or acquired by gift or inheritance?

5. This suit was brought under Section 4 of the "Anti-Trust Act," which gives the Court jurisdiction to prevent and restrain violations of the Act. Every violation of the Act is criminal. The Court is, therefore, given jurisdiction to prevent and restrain the commission of a crime. Months before the suit was begun, the Securities Company had acquired a large majority of the shares of the defendant railway companies, from time to time, from hundreds of individual shareholders, who sold their holdings in good faith, and much of the stock so taken in payment therefor has since been sold and exchanged, and passed through many hands, in the usual course of business. Does

the "Anti-Trust Act" give the Court jurisdiction to annul the purchases made by the Northern Securities Company, and compel a return of the shares it purchased? Payment for the shares it bought was made in its own stock in part only. It paid cash to the amount of over $40,000,000. The owners of such shares are changing from day to day; they are not before the Court. The decree does not restrain a contract or combination in restraint of trade. It destroys or impairs the value of millions of dollars worth of property, owned by many hundreds of people who acquired their title in good faith. and who are not parties to this suit.

FIRST.

The commerce clause of the Constitution of the United States does not take away from the several States the right to authorize the formation of corporations, define their business, fix the amount of their capital or purchasing power, and regulate the issue, sale and ownership of their capital stock.

The right of the Northern Securities Company to purchase and sell securities. and the stock of other corporations, is the same as though its capital had been fixed at $500,000 instead of $400,000,000. It is said that, if the Northern Securities Company may purchase and hold the shares of the defendant railway companies, the purpose of the "Anti-Trust Act" will

be defeated; that a corporation may be organized with a sufficient capital to purchase the shares of all the railway companies in the United States. Doubtless, under the laws of many, if not all the States, corporations may be organized as manufacturing companies or mercantile companies, with sufficient capital, and lawful right, to purchase an unlimited number of manufacturing or mercantile establishments. Corporations may be organized in many States, with unlimited purchasing power, and with authority to purchase the capital stock of all other corporations. Whether corporations are being organized with powers too extensive, and capital too large, is not a matter for Congress to regulate. As respects the purchase by one corporation of the shares of another, the matter rests with the States which have created the corporations. Should unification of ownership of property in corporations proceed to such an extent as to be thought against public policy, it may be prevented by the several States, through limiting the power of corporations, and restraining their right to engage in business.

It has been the practice, since the infancy of railroads in this country, for one railroad company to purchase or lease the railroad of a competing company, or to acquire a majority of the shares of a competing company, or of two companies competing with each other, or to effect the consolidation of competing companies. This has been done without objection from any branch of the Federal Government, and has invariably proven benfi-

cial to the railway companies concerned, to their shareholders, and to the public.

The extent to which this has been done appears in the record, and is shown by extracts from Poor's Manual and from the annual reports made by the Interstate Commerce Commission to Congress, from 1889 to 1900.

The Union Pacific Railway owns $75,000,000 of the $200,000,000 capital stock of the Southern Pacific Railroad Company. The Oregon Short Line Company, which is controlled by the Union Pacific Railway Company, held a majority of the shares of the Northern Pacific Company, from the 1st of May to the 18th of November, 1901. The Boston and Maine Railroad Company controls, through lease and stock ownership, parallel and competing lines of interstate railway in Massachusetts and Maine. The New York, New Haven and Hartford Railroad Company controls, through lease and stock ownership, the lines of two competing railways between New York and Providence and other New England points; also the Fall River, Providedce and Stonington lines of steambaots. The New York Central and Hudson River Railroad Company owns the line of railwaye xtending from New York to Buffalo, and controls, through lease and stock ownership, the competing line of the West Shore Railroad Company, which extends from Jersey City to Buffalo.

The New York Central and Hudson River Railroad Company also owns a large majority of the stock of the Michigan Central Railroad Company, with its proprietary lines; also of the Lake Shore and Michigan Southern Railway Company, with its proprietary lines, including the New York, Chicago and St. Louis Rail-

road Company, known as the Nickel Plate. Thus the Michigan Central, Lake Shore, and Nickle Plate, three competing lines between Chicago and Buffalo, are controlled, through stock ownership, by the New York Central and Hudson River Railroad Company.

The Pennsylvania Railroad Company and the Pennsylvania Company, th Illinois Central Railroad Company, the Philadelphia and Reading Company, the Louisville and Nashville Railway Company, and the Southern Railway Company, each control, through lease or stock ownership, competing interstate lines of railway.

This subject is discussed at length in the brief of Judge Young with proper reference to the record.

See maps

New York Central lines, Defendants' Exhibit 11.

Pennsylvania lines, Defendants' Exhibit 12.

Boston & Maine, Defendants' Exhibit 13.

Illinois Central Ry. Co., Defendants' Exhibit 14.

Baltimore & Ohio, Defendants' Exhibit 15.

N. Y., N. H. & H., Defendants' Exhibit 16.

SECOND.

Unity of ownership of shares of competing corporations, engaged in interstate trade, does not restrain such trade, and is not forbidden by the "Anti-Trust Act," nor is such unity of ownership a regulation of interstate commerce, and thus subject to exclusive Federal jurisdiction under the commerce clause of the Constitution.

The "Anti-Trust Act" does not forbid, and make criminal, all restraints of trade among the several States, but only such restraints as are the direct and necessary result of contracts or combinations, entered into for the purpose, between those who own or control separate instrumentalities of commerce or separate mercantile or manufacturing establishments. The Act forbids contracts or combinations, in the form of trust or otherwise, between those owning or controlling competitive instrumentalities or establishments, that they will not, in their separate interstate operation, compete with each other. Selling transportation is trade. Trade is restrained when competitors, whether merchants, manufacturers or carriers, agree with each other, to limit output, and not to sell goods or transportation except at a given price, or at a governing price to be fixed by an agency or association formed for the purpose. It may be that the price fixed is reasonable, but the agreement fixing the price, or giving to an agency the power to fix the price, is unlawful, because the parties

to it thereby restrain the exercise of their right, power and duty to themselves fix a price for the thing sold. In such case, by the terms of the contract, competitors agree not to compete.

In the *Freight Association Case*, 166 U. S., 290, and in the *Joint Traffic Association Case*, 171 U. S., 505, competing railway companies entered into a contract, by which each company restrained itself from making rates, and gave to an agency formed for the purpose, authority to make rates, which should be the governing rates for all the companies. Thus, each company restrained itself, and agreed not to compete with any other company party to the contract. Whether the rates made by the agency or association were or were not unreasonable was immaterial. The agency had no power except such as was given by the contract. The contract creating the agency was void, not because it gave power to the agency to make rates, but, because, by the terms of the agreement, competition was suppressed. The parties to the agreement bound themselves not to compete, and thus trade was, by the terms of the contract, directly restrained,

In *Addystone Pipe and Steel Company vs. United States*, 175 U. S., 211, six corporations engaged in the manufacture, sale and transportation of iron pipe, and being located in different States, entered into an agreement parcelling among themselves the business of a large number of cities in different States, with the purpose and intent of increasing the price at which iron pipe should be furnished to such cities. When any such city desired to buy iron pipe, one of the corporations, party to the agreement, would make a bid much above a fair market price. The other companies would present higher bids to give the appearance of

competition. In this way the company designated would get the contract, but would have to pay a large bonus to be divided among the other companies. Here also there was an agreement between the parties to the contract not to compete with each other.

(a) If, instead of entering into such contracts, the corporations, parties to each contract, had become one corporation, by consolidation under authority of the laws of the several states where each corporation was organized, would the consolidation be held unlawful, as a regulation of interstate commerce, and in violation of the "Anti-Trust Act," because of the power acquired through unity of ownership? Would the laws of the several states authorizing such consolidation be held to be void, as regulations of interstate commerce, by reason of giving to one corporation, the consolidated company, the right and power formerly exercised by several competing interstate corporations in the conduct of their business.?

(b) If, under the laws of the states where each corporation, party to the several contracts, was organized, the sale of all the stock held by the owners of each corporation to a single interest, individual or corporate, were authorized, would such sale be held to suppress competition, and thus to restrain trade, and, for that reason, unlawful and criminal under the "Anti-Trust Act?"

(c) Has Congress power to forbid, and does the "Anti-Trust Act" forbid, the purchase by one ferry company of the boats of a competing ferry company, running between New York and Jersey City, or a majority of all the shares of the competing ferry company, because, through such unity of ownership, trade would be restrained?

(d) Should two citizens of New Jersey, engaged in raising potatoes for the New York market, agree that they would not sell in the market for less than $2 per bushel, and to cease competing for a lower price, the agreement would be void as in

restraint of trade, though there were many other persons engaged in the business of raising and selling potatoes. But suppose one of them should buy the farm of the other, or his entire crop, would the sale be void. The necessary result wolud be to give the buyer power to fix the price of the crops of both farms, and also power to withhold from sale the entire crop of both farms? Is such a sale a regulation of commerce?

(e) All the stock of two competing corporations operating ferryboats between New York and Jersey City is held by ten separate owners. They form a mercantile partnership, and transfer to it, as partnership assets, all their shares in both companies. Is the transfer void as a regulation of interstate commerce, in violation of the "Anti-Trust Act", because the partnership has acquired power to vote the shares of both companies?

(f) Has the Federal Government any more authority over the transfer or sale of stock of competing corporations, engaged in interstate trade, than over the ownership of the property of such corporations? Should the state of Minnesota and the Great Northern Railway Company agree that the railway of the latter, situated within the state, may be abandoned, and the tracks removed, has the Federal Government power to object, upon the ground that competition has been destroyed, and interstate trade restrained, through the destruction of a competitive instrumentality of interstate commerce? The wharves in the city of New York, used and occupied by foreign steamship lines, are as direct and indispensable instruments of foreign trade carried on by those lines, as are the ships themselves. Has the Federal Government authority to determine who may own, lease or control such wharves in the city of New York? If a single individual, or a single corporation, should, through contract or combination, lease or buy the entire waterfront of Manhattan Island, has the Federal Government the right to object, and would such purchase, by reason of the power acquired as incident to ownership, be in violation of the "Anti-Trust Act?" If the docks were owned

by separate corporations, would the purchase by a single owner of the capital stock of the corporations be held to be illegal and criminal in violation of the "Anti-Trust Act?"

(g) If the Northern Securities Company had purchased the stock of the railway companies it now holds, under special laws of the states of Minnesota and Wisconsin, authorizing the purchase in specific terms, it would have acquired no other or different power than it now possesses. Would the laws authorizing such sale, and the acquisition of such powers be held inoperative and void as a regulation of interstate commerce?

(h) If unity of ownership of a majority of the shares of competing corporations, engaged in interstate trade, is not forbidden by the "Anti-Trust Act," is a contract or combination to bring about such ownership forbidden and criminal? In such case, would not the contract or combination be lawful as having been entered into for a lawful purpose?

Distinction between contracts or combinations, in the form of trust or otherwise, in restraint of trade, and unity of ownership of corporate shares or competing properties through purchase, partnership, consolidation, corporations, or by gift or inheritance.

The Anti-Trust Act does not define what shall constitute a restraint of trade. What constituted a restraint of trade before the act was passed constitutes a restraint now, and what constitutes a restraint now would have constituted a restraint then. Contracts or combinations in restraint of trade, forbidden and made criminal by the "Anti-Trust Act", are contracts or combinations in restraint of trade as defined by the common law. At common law some contracts in re-

straint of trade are legal; others are illegal. The "Anti-Trust Act" makes every contract in restraint of trade illegal and criminal. What constitutes a restraint is a question to be determined under the common law. Would unity of ownership of competing establishments engaged in interstate trade, or of the stock of competing corporations engaged in interstate trade, be held in restraint of trade at common law? A contract between competing railway companies not to compete with each other is a contract in restraint of trade and, whether unlawful or not under the common law, is made unlawful by the "Anti-Trust Act." The uniform characteristic of contracts or combinations held to be in restraint of trade has been that they were executory agreements. They provided expressly, or by implication, for the doing or not doing of an act or acts directly connected with competitive trade operations, and having the effect of an immediate restraint of commerce. It has never been held, under any common law definition of the term, that trade is restrained, or competition necessarily destroyed, by the purchase of property, or unity of ownership of competing railroads, steamboats, stage coaches, or mercantile or manufacturing establishments. For years innumerable instances have occurred in which trade, industrial or transportation competitors have bought out the establishments or business of each other or entered into partnership with each other, or formed corporations to buy the plant or establishment of all, and operate them in the same line of business. Doing this has been a feature of the business organization of every trading and industrial people. It does not appear to have been suggested in any Court that unification of ownership of competing establishments or in-

strumentalities is forbidden by the common law, or defined by the common law as a restraint of trade.

There is a distinct difference between an agreement between the owners of competing concerns, to divide territory, to restrain output, or to maintain prices, and the unconditional sale of the property or business of one of them to the other, or of the property or business of both to another person. In the former case, the agreement in terms restrains competition in trade operations, between separate owners or establishments, or instrumentalities engaged in such operations. The agreement relates to the manner in which competitors shall conduct their business. If one competing concern buys the plant or business of its competitor, competition is not thereby directly restrained. The restraint in such case, if any, is merely an incident to the ownership of property, and the fact that there may be such a restraint does not forbid the acquiring of such ownership. By unity of interest output is not necessarily limited, prices are not necessarily increased. On the contrary, the public may be benefited, prices may be less by reason of greatly increased volume of business and less cost per unit of production.

THIRD.

The "Anti-Trust Act" is a penal statute and, as construed by the Court below, it makes unity of ownership of a majority of the shares of competing corporations engaged in interstate trade, no matter how such ownership is acquired, criminal, because such ownership gives power to commit crime.

It is conceded that such ownership, so far as it may control the policy of the corporations, can be exercised for a lawful purpose, for building up trade, increasing competition and reducing prices.

It is not claimed or pretended that in the case under review trade has been restrained, yet the Court below held that unity of ownership of a majority of the stock of the defendant railway companies was unlawful, and, therefore, criminal, because such ownership has necessarily caused the doing of something that has not been done; has necessarily restrained trade, though trade has not been restrained.

Stated in another way, the Court below decided that ownership by the Northern Securities Company of a majority of stock of the defendant railway companies regulates the commerce of the companies, and though such commerce has in fact been so regulated as to build up trade, increase competition and reduce prices, in law it

has necessarily been so regulated as to restrain trade, suppress competition and increase prices because through unity of ownership motive to compete has been destroyed.

Every violation of the "Anti-Trust Act" is unlawful and criminal. There can be no crime in the absence of criminal intent. If the purchase of the shares of the defendant railway companies by the Northern Securities was unlawful, it was criminal. It was not unlawful unless it was criminal. It was not criminal unless criminal intent is to be inferred from the fact of the purchase, and the acquisition of power to elect a separate Board of Directors for each of the defendant railway companies. The decree must be reversed unless, under the evidence disclosed in the record, the officers of the Northern Securities Company, who negotiated the purchase of the shares of the defendant railway companies, could be convicted under an indictment charging the facts stated in the bill. It is the function of legislatures and not of the courts to define crime. It is the province of the Legislature to declare in explicit terms how far a citizen should be restrained in the exercise of that power over property which ownership gives, and it is the province of the Court to apply the facts to the law. If the Legislature undertakes to define a new offense by statute, and provide for its punishment, its will should be expressed in such language as not to deceive or mislead the common mind

In Tozer vs. United States, 4th I. C. C. Rep., 246, BREWER, Circuit Judge, said:

"In order to constitute a crime, the act must be one which the party is able to know in advance whether it

is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable. There must be some definiteness and certainty. In the case of R. R. Co. v. Dey, 2nd I. C. C., 325, I had occasion to discuss this matter, and I quote therefrom as follows:

'Now, the contention of complainant is, that the substance of these provisions is that if a railroad company charges an unreasonable rate, it shall be deemed a criminal and punished by fine, and that such statute is too indefinite and uncertain, no man being able to tell in advance what in fact is, or what any jury will find to be, a reasonable charge. If this were the criticism to be placed on this act as a whole, it would be certainly obnoxious to complainant's criticism, for no penal law can be sustained unless its mandate shall so clearly express that any ordinary person can determine in advance what he may do, and what he may not do, under it.'"

In Schooner "Paulina's" Cargo vs. United States, 7 Cranch, 61, the Court said:

"It is the province of the legislature to declare in explicit terms how far the citizen shall be restrained in the exercise of that power over property which ownership gives, and it is the province of the court to apply the rule to the case thus explicitly described, not to some other case which Judges may conjecture to be equally dangerous."

In United States vs. Reese, 92 U. S., 214, the Court said:

"Laws which prohibit the doing of things, and provide a punishment for their violation, should have no double meaning."

We come again to the point that the "Anti-Trust Act" does not define what shall constitute a restraint of trade. It does not in terms forbid the purchase, by a single owner, of a majority of the shares of competing corporations engaged in interstate trade, or the

purchase by the owner of a ferryboat running between New York and Jersey City of the boat of a competitor. By whom is the question as to whether such a purchase is a restraint of trade, or not, to be determined? Such a purchase does not necessarily restrain trade under any common law definition of "Restraint." If an individual in good faith, and from a desire to make a profitable investment, should purchase a majority of shares of competing ferry companies, running boats between New York and Jersey City, can he be indicted and convicted as a criminal under the provisions of the "Anti-Trust Act?" From reading the "Anti-Trust Act," would he be held to have known that it forbade such purchase, and therefore charged with knowledge that he was committing a crime?

In the Joint Traffic case, 171 U. S., 505, and the Freight Association case, 166 U. S., 291, the contracts under review in terms restrained trade. The parties to the contract agreed not to compete with each other. It was not for them to say that they did not intend to restrain trade, when they had entered into an agreement by which they had deliberately restrained themselves from making rates. It was not for them to say that they did not intend that the agency given power under the contract to make rates should not make unreasonable rates.

The officers of the Northern Securities Company have done nothing criminal, unless in the act of purchasing a majority of Great Northern shares, after having first purchased a majority of Northern Pacific shares, yet, under the decision of the trial Court, they committed a criminal act, and are liable to be indicted because they negotiated the purchase of a majority of the shares of the Great Northern and Northern Pacific

Companies in good faith, not knowing or believing that such a purchase was forbidden, or that it would necessarily restrain the interstate commerce of the railway companies.

FOUR.

Trade has not been restrained through the exercise of the voting power of these stocks. The ruling that trade has been restrained, is contrary to the facts, and charges the individuals engaged in this transaction with a crime, that has not been committed nor intended.

When this suit was begun, the shares of the Northern Securities Company were held by over eighteen hundred separate owners who had purchased them in good faith, in the usual course of business (fol. 3123). The shareholders of the defendant railway companies, who were instrumental in organizing the Securities Company, have never owned to exceed one-third of its stock (fol. 3118). The control of the Northern Securities Company, so far as stock ownership can control it through the election of a Board of Directors, is not in the eight Great Northern shareholders who were concerned in the organization of the company, but in the seventeen hundred and ninety shareholders owners of more than two-thirds of its stock. **The combination of which the Court convicted the eight individual defendants, was not one by which they were to acquire control over the two**

railway companies, for themselves, but one through which such control would necessarily be conferred upon the 1,790 other stockholders of the Securities Company.

The eight shareholders, if they ever had control of the Great Northern and Northern Pacific Companies, parted with such control upon the organization of the Northern Securities Company, and the acquisition by the latter of a majority of the shares of the defendant railway companies. Control of the railway companies, so far as it rests upon stock ownership, is in the voting power of the Northern Securities Company, and that voting power is not held by those consulted about the formation of the Securities Company, but by the seventeen hundred and ninety other shareholders, who in the aggregate own more than two-thirds of its shares.

The ruling of the Court, that the possession of the voting power of a majority of the shares of the defendant railway companies by the Northern Securities Company, necessarily restrains trade through suppressing competition, finds no support in facts. The Boards of Directors of both railway companies may be elected by the Northern Securities Company. The executive officers of the two companies will be elected by these boards, and the ruling of the Court rests upon the proposition, that such boards and officers will be influenced, persuaded or coerced in such way, that they will lack their former incentive to compete for traffic, to obtain

it from each other, and to underbid each other for the purpose of getting it; that they will enter into contracts or in some way through concert of action, maintain higher rates than ought to be maintained; in other words, that they will charge unreasonable rates, will not provide adequate facilities, nor extend construction of lines.

The Northern Securities Company has no power or motive to restrain trade which any single owner of a majority of the shares of defendant railway companies would not have, and which the individual owners of the shares did not have, by lawful conference and concert of action, before they transferred their shares to it. The shareholders who were concerned in the organization of the Northern Securities Company had a financial interest in their investment in the shares, and an interest in the railway companies, and in the business and policy to be adopted and carried out by them. Had they, in anticipation of a stockholders' meeting of each company, agreed between themselves that they would vote for individuals selected by them as directors for each company, and would try to influence the majority of the shareholders of each company to join in voting with them for such individuals, would the agreement, and action under it, have been unlawful and criminal, as a contract or combination in restraint of trade? Would an agreement respecting the exercise of the voting power of the shares be unlawful and criminal? Had a large majority of the shareholders of both companies, by concert of action, given proxies to a single person, to vote their shares at a meeting of stockholders of

each company, in the election of a board of directors, would the proxies have been void and the act unlawful? In such case there would have been a unity of power in one person to elect directors for each company.

There is no presumption that the defendant railway companies will not give good service, at reasonable rates, because the majority of the stock of each is, for the time being, in the hands of a single owner, where it may be retained until such owner makes sales of the shares which he is at liberty to do at any time. It does not necessarily follow from the unity of ownership of a majority of shares of the two railway companies by the Northern Securities Company, that good service will not be given at reasonable rates.

The lawful rates of competing railway corporations are, in nearly every instance, made through conferences between the rate making officers of the companies.

Rates must be published, and the rates of one carrier must be as low as the rates of others, to avoid a loss in competitive traffic. Substantially all rates are made by conference between rate-making officers. This is necessarily so, because there is a relation between them, as respects markets and market conditions, which requires, to a large extent, co-operation in rate making. There is no pecuniary inducement to reduce rates except to get more business. Since rates must be published, and when published will be met, no advantage will accrue to one competitor over another through a reduction of published rates, because relations will not be changed. Under the "Interstate

Commerce Act" there has been, and can be, but little lawful competition in rates. Inducement to reduce rates does not exist when volume of traffic will not be increased thereby. Again, competition between markets, the conditions of markets, the relation of rates, all make necessary and unavoidable, concert of action between carriers in making rates. Conditions will not be changed, or their operation, because the ownership of the stock of the defendant railway companies is in the hands of one owner instead of many. This is not a case where carriers have agreed not to compete; it is a case where one owner has purchased a majority of shares of competing interstate carriers. Because of this ownership, the relation of the defendant railway companies will not be changed as respects circumstances and conditions, from time to time, which control rates and which both companies must observe.

Good Service and Low Rates.

The defendant railway companies were hampered, and placed at disadvantage with other transcontinental railways, as well as with ocean competitors by the want of sufficient direct connection with traffic centres offering the best markets for the products of the country along their lines, and with places of production and distribution from which their traffic must be supplied. Through the purchase of the Burlington shares, they acquired permanent access to markets and sources of supply, instead of a temporary one resting upon joint rates subject to change at any time without regard to their interests. Having made the purchase and assumed the resulting joint and several

obligations, it became a matter of the highest importance to each company that the burdens should be equally borne and the advantages equally shared. Through placing the ownership of a majority of the shares of both companies in the hands of a single owner, the benefits of the Burlington purchase became better assured than would be the case if the shares were held in many hands, and liable at any time to be sold to an interest adverse to the building up of the business of the defendant railway companies and the country which their lines traverse.

Good service, at low rates, is assured through an increase in the volume of traffic. Cost of operation, repairs and maintenance is about the same, whether trains run light, half loaded or with full loads. With a full train all the transportation power is sold, and the net earning of the train is much larger than it would be if but half loaded. The defendant railway companies are in competition with the Canadian Pacific Railway Company, which extends across the Dominion of Canada from ocean to ocean ; with the Union Pacific and Southern Pacific Companies and other lines of railway ; as respects both interstate and international traffic. To meet such competition, and increase their volume of traffic, and thus be able to improve facilities and reduce rates, they must have permenent access to the great traffic centres and a large volume of interstate and international tonnage. *Through the Burlington purchase and the ability of the shareholders of the defendant railway companies to preserve the enterprise from the attack of the Union Pacific interest, traffic has been created, its volume largely increased and rates have been reduced.*

MR. HILL:

Q. Is the business of defendant companies to and from the Coast, and their other business, such as to put them in the same position in regard to the necessity of such a purchese as that of the Burlington?

A. I think so. In fact, I know that is the case. Both the Great Northern and Northern Pacific, as far as that business is concerned, would have to limit the eastward movement, or else increase the westward movement in order to furnish the facilities. In order to do that we have got to compete with the Suez Canal; we have got to compete with anything that floats on the high seas, and it is a big undertaking, but we are doing it, and doing it successfully.

We compete, not only with lines of transportation, but with markets. We compete with goods. The goods are counted at their value laid down there, and competition extends all the way through, from the production, the transportation and the cost of laying them down; with Germany and Great Britain as far as the production and transportation, with Norway and Sweden as respects transportation alone. They do not produce so much, but they furnish a great deal of cheap transportation. We compete with the lines across the American Continent, the Isthmus and the Panama Route. The latter is hardly called competition, because the Suez Canal is so much more effective that our competition with it leaves the Panama Route practically out of the question (fols. 2697 to 2699).

Q. What, if any, has been the effect of that purchase upon commerce between the states and with foreign nations.

A. It has very greatly increased it. It has increased it more rapidly than I have ever known commerce of the same extent to be increased in the same time. The increased tonnage, eastbound, growing out of the increased tonnage westbound has very largely increased the total tonnage. Foreign commerce has increased over 100 per cent., which is a very unusual increase in one year, and the effect of the increase of the entire business has made a large increase in the revenue of the company, and it has been able to reduce rates from 10 per cent. to 15 per cent. in a year on the local business between the Pacific Coast and the Twin Cities and Lake Superior. When I say from 10 to 15 per cent. I speak

of business in a general way, and that is very nearly the actual reduction (fols. 2696-2713).

Q. Can you give the quantity of raw cotton, or piece goods, carried in 1901 and in 1902 ?

A. Yes. By the Great Northern in 1901 the amount of cotton piece goods was 13,070 bales ; in 1902, 64,542 bales ; raw cotton in 1901, 13,230,000 pounds ; 1902, 41,243,000 pounds (fol. 2707).

MR. MELLEN :

Q. Did the acquisition of the stock of the Burlington Road by the Great Northern and Northern Pacific have any effect or influence to restrain or hinder trade or commerce between the states and with foreign nations ?

A. I have thought it promoted rather than hindered it. It resulted in a much freer interchange of business between the Northern Pacific and the Burlington. The business has increased very much ; it has been more to the interest of the two companies to work more closely together ; it has opened a much wider market to the products tributary to the line of the Northern Pacific, and the business has increased. I have no figures to show, but it is my impression that business has increased very considerably, and it is bound to increase from month to month and from year to year (fols. 3417, 3418).

MR. HARRIS :

Q. Will the acquisition by the Great Northern and Northern Pacific of the Burlington shares restrain trade and traffic between the states and with foreign countries ?

A. On the contrary, I think it will promote business very greatly and develop latent resources and enable forest, mineral and other products and resources to be utilized which are now idle (fol. 2971).

3. It has not been shown that the power of the defendant railway companies to restrain competition can affect more than three or four per cent. of their interstate traffic, or that it has affected or can affect construction

or extension of their lines, or the amount or quality of their equipment. Through their ownership of Burlington shares, and by reason of the obligation assumed in paying for the shares, they have a common interest in building up the traffic of each in connection with the Burlington Company. This connection became necessary to their prosperity, to the welfare of their patrons, and to the successful meeting of a world-wide competition. What has been done was done, not to restrain competition, but to enlarge it.

The unity of ownership of their shares has not restrained the commerce of either, and the extent to which such unity can restrain it, is as nothing compared with the great increase in volume of interstate and international commerce which was intended, and which will result from the carrying out of the enterprise of the two companies in the purchase of the Burlington stock, and the preservation of the purchase, and its benefits, by placing the stock of the railroad companies where it is less likely to become scattered and to pass under control of adverse interests, than it would if held by many owners.

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